

BEFORE THE
U.S. DEPARTMENT OF ENERGY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH

WORKER ADVOCACY ADVISORY COMMITTEE MEETING
Loews L'Enfant Plaza Hotel
Washington, DC

October 21, 2002

APPEARANCES:

RICKY BLEA
LESLIE I. BODEN
JOHN F. BURTON, JR.
STEVE CARY
JEANNE CISCO (by phone)
BEVERLY COOK
RICK CUTSHAW
JEFF EAGAN
LARRY ELLIOTT (by phone)
DONALD ELISBURG
JAMES ELLENBERGER
CLAUDIA GANGI (by phone)
VIKKI HATFIELD
STEVEN MARKOWITZ
LEN MARTINEZ
BERNARD MEYERS
KATHRYN MUELLER
IRIS J. POST
GLENN SHOR
EMILY SPIELER
DAVE SUNDIN (by phone)
PETE TURCIC
GREGORY WAGNER
LAURA S. WELCH

AGENDA

WELCOME/INTRODUCTIONS/
OPENING REMARKS/ADOPTION
OF MINUTES

EMILY SPIELER

OPENING REMARKS ON
ISSUES OF INTEREST

BEVERLY COOK

STATUS OF PROGRAM IMPLEMENTATION

HHS
DOL
DOJ
DOE

LARRY ELLIOTT, NIOSH
PETE TURCIC
CLAUDIA GANGI
STEVE CARY

SUBCOMMITTEE REPORTS/ISSUES

SUBCOMMITTEE CHAIRS

MEDICAL PANELS AND CAUSATION ISSUES
POST-MEDICAL REVIEW PANEL ISSUES
CLAIMS SUBMISSION/PROCESSING
CONTRACTOR/INSURER RELATIONS
STATE AGENCY RELATIONS
PROGRAM EVALUATION & PERFORMANCE MEASUREMENT

PATH FORWARD/NEXT MEETING

EMILY SPIELER

PUBLIC COMMENT

ADJOURNMENT

1 PROCEEDINGS

2 9:00 a.m.

3 MS. SPIELER: Okay. Let's get started. Why don't we begin by
4 having everyone introduce themselves around the table; who they are, where they are
5 from.

6 MS. POST: Iris Post, Attorney.

7 MR. MARTINEZ: Len Martinez, Kaiser-Hill.

8 MR. MARKOWITZ: Steve Markowitz, Queens College.

9 MS. MUELLER: Kathryn Mueller with the State of Colorado.

10 MR. OLSEN: Mark Olsen.

11 MS. SPIELER: I am Emily Spieler, Northeastern University School of
12 Law.13 MS. HATFIELD: Vikki Hatfield, community representative on the
14 committee.15 MR. WAGNER: Gregory Wagner. I work at the National Institute for
16 Occupational Safety and Health, but I do not represent NIOSH at this meeting. I am
17 here in an individual capacity.18 MR. BODEN: I'm Les Boden. I'm from Boston University and I am
19 not here representing the University.20 MR. BURTON: John Burton, Rutgers University and I am here
21 representing the University.22 MR. ELISBURG: I'm Don Elisburg. I'm an attorney representing the
23 building construction trades.24 MR. STOLLER: Ken Stoller. I handle workers' compensation issues
25 for the American Insurance Association.26 MR. MICHAELS: David Michaels. I am a consultant to the
27 Department of Labor.

1 MR. TURCIC: Pete Turcic, Director of the program for the
2 Department of Labor.

3 MS. RABINOWITZ: Mandy Rabinowitz. I'm here in behalf of PACE
4 International.

5 MS. ZACCARO: I'm Mary Jo Zacchero, Department of Energy.

6 Mr. GOLDSMITH: I'm Bob Goldsmith, Assistant Manager for Safety
7 Programs, DOE.

8 MR. CARY: Steve Cary, Department of Energy.

9 MR. KINDRICK: Alan Kindrick, Department of Energy.

10 MR. CUTSHAW: Rick Cutshaw, SPAWAR ITC.

11 MS. KEATING: Office of Worker Advocacy. Designated Federal
12 Officer for the meeting.

13 MS. SPIELER: There are two matters before we go into the agenda.

14 MS. COOK: Emily, who do we have on the phone?

15 MS. SPIELER: The phone. I'm sorry. Ricky and Jeannie, are you
16 there? Identify yourselves, please.

17 MS. CISCO: Yes. Jeannie Cisco, Portsmouth Uranium Enrichment
18 Plant.

19 MS. SPIELER: Is Rick on the phone?

20 (No response.)

21 Two items that weren't on the agenda that I just want to note.

22 First of all, we didn't have approval of minutes from the last meeting on
23 the agenda. And actually, there were a number of things that were pointed out to me
24 that were missing from those minutes, so we're going to postpone the approval of those
25 minutes for today.

26 And the other thing was that I noticed in the materials that were sent out
27 that we had talked about having someone come in today and lead a discussion of the

1 ethical issues, and I guess we forgot to make those arrangements.

2 MS. KEATING: I was trying to make an arrangement for that and it
3 just didn't -- I'll arrange that for the next meeting.

4 MS. SPIELER: Okay.

5 MS. COOK: I think maybe what we can do is get something written
6 up to send to everyone, too, because I don't want to wait any longer. Why don't we
7 try to do that.

8 MS. SPIELER: Okay.

9 Assistant Secretary Cook, I think I can turn this over to you for your
10 initial opening remarks.

11 MS. COOK: Terrific. Thank you.

12 I started writing up notes last night to make sure I didn't forget
13 anything, and it got long, so let me try to do this very quickly.

14 Much has happened since our last meeting, as you all know. Some of
15 you have been actively involved in that. I told Len I was going to talk about him at this
16 meeting, at this introduction, because he's been actively involved, as many others have.

17 As you know, our rule went into effect in September. That was very
18 exciting for us. It is drastically different than where it was even last January in some of
19 the ways that we're going to go about implementing it.

20 For instance, not doing any kind of pre-screening of state criteria for
21 any specific state opened up a lot of things that we had to do differently.

22 In any case, we're very pleased to finally get the rule in place and to get
23 moving.

24 Steve's going to talk more about where we are in our program
25 implementation but there's just a couple of things I wanted to point out. And one of
26 them is when you look at the MOAs that we needed to have in place with the states, 15
27 states control maybe 99.7 percent of all of our claims that we have. And in fact, of

1 those 15 states we have 10 agreements in place. One, the negotiations are complete
2 and ready. The paper's in the mail; and four others that we're still negotiating on.

3 So what that means is we're up and ready to go for most of the claims
4 that we have in place, and that's very encouraging.

5 The state agreements -- I think you have them in our packet. All the
6 state agreements that are in place are in your packet. You'll see that there's some
7 variations state-to-state based on how things work in their state.

8 For instance, Alaska wants to know immediately when we get a
9 positive finding. Whether we have an indication from someone that they want to go
10 ahead and file or not, they want to know immediately. Those sorts of things.

11 But I'm very pleased at how quickly how that's gone. And Kate's
12 worked very hard to make that happen.

13 Let me just tell you a little bit what I've been up to. I've done a lot of
14 visits to sites because, as you all know, this is very, very complicated. Since June I've
15 been to six different sites. I've got three more going in November. Since February,
16 actually, I've visited seven of the 10 resource centers and three more of those to go.
17 Trying to get to all of them.

18 Two weeks ago I was in Alaska talking to folks there. The
19 complications are things like talking to the workers in Alaska. I thought that was pretty
20 straightforward. And yet a woman raised her hand and said why do I have to have a
21 dose reconstruction. This is after the meeting had been ongoing for about an hour.
22 And I said, well, where did you work. And she said Rocky Flats.

23 So, I said, you may live in Alaska now but the rules for you are
24 different than the rules for the Amchitka workers because they're a special exposure
25 cohort. And so it's still confusing to folks; where they live versus where they works.
26 And especially those people that worked at multiple sites.

27 This week I'm going to Missouri. That's a very difficult situation for us

1 because we have facilities there that were both DOE facilities for which -- they fit into a
2 certain category; contractors and subcontractors. There are others which were not a
3 DOE facility but we went in and did the clean-up, so then they qualified as a DOE
4 facility for the part when we did the clean-up, and then also the AWEs. So there's
5 different pots that different people fit into.

6 So hopefully we can spend some quality time there with the workers
7 there in describing their specific situations and how they fit in.

8 I wanted to show you -- let's see. We do have an overhead.

9 While I'm talking, Allen, why don't you put the flow chart up.

10 This chart that Allen is going to put up on the overhead is the chart that
11 I use most frequently and it seems to help folks. We'll make sure you all get a copy of
12 that.

13 It shows them when they come in. And this is what we work with
14 when we talk -- with us and DOL and HHS, when we all talk about how things fit in.
15 It's nice and color coded so they know who does what part. But it shows on the left-
16 hand side people that come in with beryllium disease, radiation, a cancers and sarcosis;
17 how that goes through; where DOE fits into that. And the others that are going in for
18 other illnesses caused by toxic substances, but also the folks that come over there to
19 help with state workers comp.

20 So this chart usually is what I leave up the whole time we're talking on
21 how things go; who goes where; and which parts -- where their claims sit and who has
22 to intervene with who in this. This seems to help a lot.

23 We're going to try to get some larger copies of this to make sure these
24 are in our resources centers and that these are in all the offices of all of our contractors
25 and federal sites so that people can easily explain where things are in the process.

26 Major questions I get, just to give you a feel for what people are
27 asking. Things like why do I need a dose reconstruction. The confusion about the state

1 you live in versus the state you worked in, where your last injurious employment was.
2 That sort of thing. Those kinds of questions.

3 Why did I get turned down. At Rocky Flats I had workers holding
4 letters -- and our rule wasn't even in effect yet -- saying I've been turned down by
5 DOE. And I politely explain to them that Pete can't turn them down. Only I can turn
6 them down for DOE. And it was a letter from DOL that said you don't fit into the
7 categories that go for us.

8 So again, it's a lot of explaining to folks on how this all works and how
9 they fit in.

10 And why am I not covered. We still get questions from people who
11 have had exposures but are not ill but are worried they may become ill and how do they
12 fit in and is there a sunset on this whole thing. That kind of question.

13 So those are kind of the major things that are going on. It's the logistics
14 stuff.

15 And reminding them, as all of us need to remember, the claims that are
16 coming through, the claims that we're doing, are the ones that are the one to three
17 percent for state workers comp that weren't successful in the normal course of
18 business. So these are the hard ones. They're difficult. They're multiple sites and
19 multiple exposures to a lot of different kinds of things. And so these are the hardest of
20 the hardest. And we're going to help people to get through this and try to reduce the
21 frustration on everybody's part.

22 Okay. The position of the Director of the Office of Worker Advocacy.
23 I'll just tell you that we advertise. We advertise broadly. We're advertising again. We
24 really didn't get applications, although you all helped us with some names. Some of
25 those people were not necessarily interested after we went to talk to them. We're still
26 working very hard.

27 In the meantime, it's not stopping us from doing work, and Steve's

1 doing a fine job on getting us into a production mode here, but still we still could use
2 some suggestions or give us some leads on people who might be interest in that position
3 of Director.

4 My boss, the Under Secretary, Bob Card, suggested we need a FedEx
5 guy, someone who knows how to do production. And that really is where we are.
6 We're in a production mode. We're in a situation where we need to look at continuous
7 improvement in making sure that we have policies and processes in place to get us
8 going.

9 So, a senior scientist or world-renowned physician may not be really
10 what we're looking for. We're looking for someone who's really going to get claims
11 through and get things moving. And that's where we're headed.

12 About where we are with our claims. Again, we got a lot of case files
13 in. Really defining which of those case files are claims for the DOE part of this
14 assistance with state workers comp. The numbers are running around 12,000 that are
15 requests for assistance files for state workers comp. Although we have a lot of things
16 on our books that are files, they aren't necessarily for state workers comp.

17 At one point we were just collecting files on anybody that applied, but
18 many of those were just DOL type files. And of those, over 6,000 of those 12,000 are
19 in the process, just to tell you where we are.

20 They're in the process in a variety of ways. We've got over 4,000
21 letters out to folks asking for a generic medical release for, for instance, because early
22 on the medical releases were for a specific doctor or a specific piece of information.
23 We need those generic release forms on a lot of those that we're finding were not there.

24 We've gone ahead and processed every place we could find a case
25 that is not eligible, the AWEs or the people who have exposure but are not claiming
26 they have any illness whatsoever. We've sent out over 950 ineligible letters to let those
27 people know where they stand. Over 600 requests for data to field offices. So those

1 letters are there.

2 We do have -- and I'll get more into metric in a little bit, but we do
3 have time frames on those. For instance, the OPS offices have 60 days to get forms
4 and information back. That sort of thing. And I'll get to some of those kinds of metrics
5 and how we're moving forward.

6 But as you all know, there are a lot of things that have to happen before
7 things go to a physicians panel. There's only been about a half a dozen cases at
8 physicians panels. Those physicians panels are up and working.

9 And the first batch that were there, their 30 days ran out this weekend.
10 So I don't know whether we got answers back from them or not. But I will tell you
11 that is one of those things we need to measure; how many make the 30 days.

12 These were simple cases. I want to make sure that our physicians
13 understand that we would like them to do them sooner than 30 days; not wait until the
14 night before your homework is due. But it's going to take us some work in talking to
15 the physicians panels.

16 While I'm on that subject, I will tell you that this Friday I'm going to a
17 meeting that's actually here in Baltimore. It's the national meeting of occupational
18 medical physicians. And conveniently, they're having their meeting here this year. And
19 I'm going to go there and talk to them about this program.

20 NIOSH will be there and hopefully we can encourage some of these
21 folks to take an interest. And maybe NIOSH could pick up some more physicians.
22 I've asked them for many more. And hopefully by explaining to these folks what this is
23 all about it will peak their interest and they'll want to come play with this.

24 I don't think they're going to want to come play with us because we
25 pay so well but I do think if I were somebody in that field and I saw a program like this
26 ongoing, I would see an opportunity to really learn a lot more about my field because
27 we probably have the widest range of kinds of exposures. And the kind of data that's

1 going to come out of this, hopefully they'll be interested in looking at these cases and
2 looking at this information and want to join up.

3 So, it's a bit of me providing information and NIOSH doing some
4 recruiting this Friday. And hopefully that will help.

5 In addition to that, tomorrow morning I'm meeting with the OC MED
6 doctors around our complex and talking to those doctors, too. My message to those
7 doctors is to help them get in a proactive mode; to help them be more active in taking
8 the information that see when they're looking at their workforce and feed that into the
9 line management within their workforce and help be more proactive in allowing us to
10 protect the health and safety of our workers.

11 I think our OC MED doctors see things that we could do something
12 about or see trends that we don't always take advantage of. And that's what I'm going
13 to talk to them about tomorrow.

14 The process to assist claimants after we receive a positive finding. This
15 is also a complicated subject. I think I told you the last time but I will tell you again.
16 I've been working very closely with the other Assistant Secretaries and they've been
17 talking to their field operations. That process where if we get a positive finding then we
18 go, and I go to those offices here at headquarters. And the NNSA actually is our
19 poster child for this that we're setting up. And Steve will talk a little bit more about
20 that, setting up the process, how NNSA is going to do it, how they will notify their field
21 office, their contract officer will notify their contractor. That sort of flow down. How
22 that's going to work.

23 It's basically following the people who actually have the money, have
24 the money chain, have the line responsibilities. And we're getting very close to putting
25 that in place.

26 VOICE: What does that abbreviation stand for again?

27 MS. COOK: NNSA? National Nuclear Security Agency. It's a part

1 of DOE. It's a semi-autonomous part of DOE. It's the part that does all the weapons
2 type. So all those facilities that are -- you know, Pantex, Los Alamos. Those kinds of
3 facilities report up through that chain. And there is an Undersecretary there who is
4 acting at this point, Lenton Brooks. And he is very proactive in this and very interested
5 in this flow working very well.

6 In some of our state agreements, like Alaska, as I said, they want to be
7 notified right up front, too. So there's some variation depending on the state,
8 depending on which program office. So it's not a one size fits all, but we'll have an
9 overall framework that then we tweak depending on what the site is and what program
10 at headquarters it is. But we want to make sure that we don't get stopped along the
11 route.

12 I, EH, can't direct a contractor in the field. I don't hold their contract
13 to do something but I do know who does hold that contract. I do know how to reach
14 out and touch them. And so those are getting finalized.

15 Significant progress is also being made, but I won't tell that we're there
16 yet, in deciding on how you get paid. I will tell you that we've been very, very pleased
17 at getting site by site and looking at what the mechanisms are for getting people paid.

18 As you know, there was some estimate early on that maybe half the
19 claimants -- you know, that we couldn't reach out and touch them. Well, I will tell you
20 that we've found in many, many cases there are retrospective policies at these sites
21 where the current contractor has a policy that is non-risk bearing to the insurance
22 company, like an escrow account. They pay in a certain amount each year but if there
23 are more payouts than that amount, we, DOE, can put more money in that pot to cover
24 the rest of it.

25 And so we're finding out what the situation is site by site. Some of
26 those retrospective policies cover only the M&O contractors. Some of them cover the
27 M&O and the subs. Some of them, like at Rocky, for instance, you've got the

1 retrospective policy that covers all the old ones. The complication is with the current
2 contractor and the fixed price contract there.

3 There's a whole bunch of versions of this and different ways, but we're
4 finding out that we have a much larger ability to reach out and touch and reimburse
5 someone to pay the claims than we thought we did.

6 So hopefully within the next month we will have all of that figured out
7 and make sure that our contractors understand -- and our field offices understand the
8 ways that we can reach out and touch those folks.

9 Another thing about that is we're working with the contractors to make
10 sure that they count those payouts on claims differently than they do their normal
11 statistics because part of the statistics of a contractor is how many workman comp
12 claims you have and all that kind of thing. And we don't want them fighting us on this
13 because it affects their company position in any way. We want to make sure that this is
14 counted in another realm for those legacy things so that they don't end up reluctant
15 because of that.

16 So all of those issues are being worked very hard but they are very
17 much site specific and contract specific. And we just have to continue on. We're
18 getting to a very good matrix on that subject.

19 I think you're going to hear a lot today about the cooperation between
20 DOE and DOL and HHS. We've really come a long way with working with the
21 databases and getting that all together.

22 I'm going to backtrack a little bit though and talk about resource
23 centers. Our resource centers are wonderful. I've been to, like I said, seven of them.
24 There are people there in general who've worked at our sites, who understand those
25 sites. When someone comes in and says I don't know what my husband or wife did
26 and starts rattling off acronyms that they don't understand and have them figure out
27 what's going on, you've got people sitting in those resource centers that can help those

1 folks understand that. And I was very, very pleased with that.

2 Having said that, these are not our best computer experts. So when
3 you tell them we want this all on an automated system, we want you to be able to enter
4 the data online so you can check and it won't accept it if you don't have all the right
5 signatures, the things like the medical release forms and everything, somehow it catches
6 them as they're entering the data to make sure they get all the right stuff.

7 It's real hard to get those two skills in the same person, so we're
8 working on that very hard, too, to get the software in a format that those folks who are
9 those great people folks, those retired folks who understand our system who can help
10 these people, to actually turn on the computer and use it. It's a struggle but we're going
11 to get there.

12 Let me tell you about metrics. That's really the thing that I'm most
13 focused on right now.

14 There are two reasons to do metrics. One is to get the outside world
15 an understanding of how well we're doing. The other one is to direct our efforts to the
16 best things possible to make sure that we're optimizing what we're doing.

17 We want to put things on the website to understand where we are, and
18 that includes giving people a sense of how many claims we're dealing with and how
19 many are in the works and in the system. And that's the kind of numbers I talked to
20 your earlier about; how many claims have been submitted, how many are in the process
21 of getting the package together. That sort of thing.

22 We also need people to understand what their role is in it. For
23 instance, our field offices. The number of days to get data from the field office. The
24 goal there is that 60 days is allowed. I don't want them to take 60 days when they've
25 got everything in place. On the other hand, I want to track very closely how many
26 people make the 60 days.

27 If it's all coming in on the last day, what that tells me is they're working

1 to the 60 days. They're not working to how quickly can they get it done. And if we
2 end up with people greatly missing the 60 days then we've got to look at our resource
3 loading issues. That sort of thing. So we want to track how many are on time with
4 that.

5 The number of days for the physicians panels; 30 days. Physicians
6 panels have 30 days to review cases. Again, if they're all coming in on the day their
7 homework is due then I know we've got an issue there in how we're communicating
8 with our physicians panels.

9 Number of days for the contractor final review. When we get the entire
10 case together, what we do is give the contractor, the current M&O contractor there 15
11 days to tell us if they have anything else. That doesn't mean they get to review the file.
12 We're not sending them a file and saying do you have anything you want to add to this
13 or any rebuttals or any of that kind of stuff. It means is there something we didn't ask
14 you for that you have.

15 And in fact, as a field manager, I know that there were times when
16 there were cases that we'd already developed, we'd already had independent study on
17 or something like that that the folks here putting together a case file may not know to
18 ask for.

19 So we're just giving them that last 15 days to do that. But for our
20 office, it's the number of days turnaround. For instance, when we get a positive finding
21 back, how long does it take us to get the paperwork to NNSA or EM or whoever
22 else, the organizations here at headquarters, and say we're moving forward. So we
23 have time lines for all of those sorts of things. But some of this will relate to how it
24 works, too; what's the right time line, so that people can really understand where they
25 are in the process and how long that step is going to take.

26 The claimants themselves though need to understand where they fit into
27 the time line. Want to make sure that -- you know, the request for the signature on the

1 medical release forms, if we're not getting those right back. We're watching that very
2 closely. We want to make sure we can figure out how do we impress upon these folks
3 that those things are part of the process and we need to get those signatures to really
4 completely move forward with their claims.

5 And for those first few claims that we really want to make sure that we
6 start exercising the whole process and filling the pipeline, we even had resource folks
7 going out to claimants' houses. This is where we get to talk about when we needed
8 that 15 day approval from the contractor to say is there anything else you've got or do
9 you know, for those first claims, do you know that things are working.

10 Those first claims that went to physicians panels were from Rocky Flats
11 and Len was great about getting that kind of feedback. But we don't want to have to -
12 - we want this to be a normal working process, not that we have to call on someone
13 like Len to say go hand carry this through, or that will make him crazy because there's
14 a lot of Rocky Flats claims. But if we have to, we'll depend on him. But at that 15
15 days, is there anything else.

16 What we do is give the claimant themselves the entire package. They
17 get the whole package to look at to make sure that everything is there that they want to
18 be there, that they're okay with it. And we have to get them to tell us, okay, I'm
19 comfortable with this. Go with it. And that's part of the process, too. How do we
20 make sure that they understand that we're not going to go forward with it until they say
21 this is it.

22 They have as long as they want. That's the decision we made. That's
23 a decision I made. And if you have comments about that, I'd love to know that.

24 But I really didn't want to push claimants to say, okay, you have 30
25 days to say this is okay or it's not okay. They need to understand that they're part of
26 the process and we need to get an answer from them. But I know that every time the
27 claimants that I've talked to or gotten letters from, every time they're given a time limit

1 that they have to do something by, it's very, very disturbing to them. It upsets them
2 very much.

3 So I suspect that's going to be one of the big holdups. They're going
4 to get this package and then they're going to not know what to do or they're going to
5 be nervous about it. And I've got to help them get over that.

6 And then the last thing on the claimants' lap though is deciding to file for
7 state worker's comp or not. There will be claimants who decide to and others who do
8 not. And we need to make sure they understand that that is an active decision on their
9 part.

10 They started out staying I want to as they learn more and go through
11 this. And we encourage people to fill out forms whether they had any lost wages or
12 unpaid medical bills or not. But they have to make that decision that they're going to
13 file for state worker's comp. And then we can help them get to the right people to do
14 that. But they have to make that decision.

15 How long it takes them to make that decision is something else.

16 And so those issues where we don't want to put a time limit on a
17 claimant but we do want to impress upon them that they need to be actively looking at it
18 and move forward, that's one of the things that we're struggling with on how to
19 communicate that well.

20 Rather than take much more time on all these sorts of things, I will just
21 tell you that we have procedures that we're working. One size does not fit all. We
22 have internal comments on those. We do want to take advantage of your
23 subcommittee on that but we weren't there yet. We should be there close soon on
24 what those procedures are so you can take a look at them. But it's going to involve all
25 these complications. And I will absolutely expect that we will continue to revise our
26 internal working procedures as we find out where the problems lie and where they
27 don't.

1 We have a project management system in place so that we track these
2 things. We have time lines, as I said, for the different steps in the process. We have
3 expectations on how much time each of those steps should take and we want to track
4 that.

5 We have a ramp-up rate that we're looking at for getting the pipeline
6 full and we're looking at that ramp-up rate to see if that's reasonable.

7 As I said, I'm really pleased that we half of our claims are in an active
8 working status. We have case workers that are assigned to a state. But again, that's a
9 state in which right now we've got to separate. It is the state in which you live now; is it
10 the state in which your claim is filed. Trying to get people from Alaska to understand if
11 they worked at Rocky and never worked at Amchitka, they're in the Rocky Flats pile.
12 They're not in the Alaska pile. Those sorts of things.

13 It's a lot of a FedEx project and it's a public relations project. And it's
14 getting all those aspects together to really fulfill the needs of the claimants.

15 It's not easy, but I think we're making huge progress. I'm really very
16 pleased, actually. When I say there are still some of these reoccurring questions, I'm
17 really pleased actually with the understanding that the claimants have.

18 I think that Missouri will be a challenge on Wednesday evening because
19 it's so complicated there, but in most cases, most of the sites I've been to, people have
20 developed a much clearer understanding from when I started in this program in
21 February until now.

22 I'm going to stop at that because I know we have lots of other people
23 to hear from. But I will take any questions up front here if you want to ask me anything
24 right now.

25 MS. SPIELER: Thank you very much.

26 Questions?

27 MS. COOK: Especially if there's something you want more details on.

1 And the folks that are going to talk later can elaborate, too.

2 MR. BODEN: Yes. I had a couple of questions for you.

3 One is I was a little surprised when you said that only six people had
4 had enough material or whatever it was, the number of people, to go to medical panels,
5 because I had assumed that during the rather long process of developing the medical
6 panel rule that they responded through the DOE to put together the information so that
7 when the rule was passed that we'd be up and ready to go with I thought probably an
8 overwhelming number of cases and that the medical panels would be able to handle
9 them.

10 Could you explain what happened that prevented you from doing that?

11 MS. COOK: It's a variety of things but basically I think the position
12 that our federal council gave us early on was don't go too far until we've got all the
13 rules in place.

14 Part of it, too, was an interest in not -- when we were going to do some
15 kind of pre-screening with the states' criteria and that sort of thing, what the physicians
16 were going to do and what kind of case information we were going to give them, it was
17 more complicated.

18 There was a reluctance to go out and ask for all that if we didn't know
19 how the rule was going to come out. If we knew we were going to be where we are
20 right now, which is uniform causation standard, they don't have to know anything about
21 the state this claim was in -- this is the illness and this is the work the person did -- I
22 think we could have gotten more.

23 So I will just tell you that we headed in a different direction. The Office
24 of Worker Advocacy had a different direction up front. I think though that we're
25 moving very quickly now.

26 Also, some of the things that are sites are doing, they're really looking
27 hard at optimizing the information they're pulling together, too. It's everything from the

1 people who are doing DND. When they find a material, a hazardous material in a
2 facility they're pulling down that was not expected to be there, they understand better
3 now that they immediately need to feed that information into the people who are putting
4 together sort of the history of that facility, cross-referencing a lot of workers in one
5 place. All that sort of thing.

6 So I really thing it's going to be optimized.

7 But the fact of the matter is, no, we didn't work a lot of claims up front.

8 MR. BODEN: Another question I had was I'm pleased to hear that
9 you've gotten your management procedures and so on in place. One of the things that
10 we had talked about and you had said that you would get to the Performance
11 Evaluation Subcommittee was a list of items that you were gathering information on and
12 some data on what was coming into the system, and you have been unable to get that
13 information.

14 I wonder if you could tell me when you would be able to get the
15 information so we can provide you with the feedback.

16 MS. COOK: And again, that's something that we've really struggled
17 hard on; what it is we track that really affects the optimization of the process.

18 I think we've settled down a lot in the last couple of weeks as we see
19 what things are coming in. It's those time frames that I want to track. I think those are
20 the things that really tell us whether we're doing well or not doing well.

21 And I expect that we can get to the subpanel -- within two weeks we
22 can get to you. These are the measures we're working towards and this is how we
23 want to track this. I really want your advice on if these are the right things to track.

24 Then it's a matter of if it's -- for instance, if 60 days doesn't work or
25 we're never going to be able to count on the physician panel getting us something back
26 in 30 days. Then some help on how we orchestrate an improvement in that is the other
27 part of assistance that you can provide for us.

1 MR. BODEN: And who is the contact person?

2 MS. COOK: Well, actually, Josh was looking at this a lot.

3 Unfortunately, Josh is not here because he had a baby last week. I don't know why he
4 didn't understand what the priorities are around here -- (laughter) but no, he's out. But
5 actually, in SEA, our contractor is working those issues, too.

6 So let us get back to the subpanel. We'll figure out how long he's
7 actually going to stay out playing with his baby.

8 MR. WAGNER: Two things. You talked about the 12,000 claims and
9 the requests for assistance that have come in and various state specific requirements.
10 Do you have a triage process or decision making process in which you respond to
11 when or how?

12 MS. COOK: We're trying very much to work this as a normal
13 worker's comp claim process, which is first-come, first-serve -- first-come, first-
14 worked. We're trying to do that.

15 On the other hand, for instance the ineligible, holding it until it came up
16 obviously didn't make sense. So we went through and sorted through and pulled all
17 those out.

18 We need to look at some other sort of triage processes, too, as things
19 come through. Again, we don't want to set someone aside who's been waiting for a
20 long time just because theirs is more complicated. We don't want to work easiest first
21 either. We want to try to come to the first-come, first-served.

22 But, for instance, when there is just a radiation induced cancer and
23 there's no other exposure and we need to wait for DOL to do its thing and NIOSH to
24 do dose reconstruction and all that kind of stuff, and so that one -- it's teed up. It's set
25 aside. We move on to the next one.

26 But if it's one that is a multiple exposure, it's a radiation cancer but may
27 be affected by other toxic exposures, we should be able to start working to get the

1 information on the other toxic exposures also and make sure that that part of the claim
2 is being worked at the same time, so that when DOL finishes their thing we can merge
3 the information together and move on.

4 MR. WAGNER: For instance, the question that you've been
5 recommending from the beginning of having a single point of entry, one-stop shopping,
6 truly integrating DOL and DOE programs because claimants are unlikely themselves to
7 necessarily segregate in their minds -- oh, this is a DOL responsibility and this is a
8 DOE.

9 MS. COOK: And that's something that both DOL -- Steve, for DOL,
10 will talk about, too. That has to do with automating the resource centers and the input
11 point. That's a lot of that. And we've done a lot of things to integrate our information
12 together so that it is much more -- have a much better ability to have that not something
13 that a claimant worries about.

14 MR. WAGNER: I think that's a real important goal.
15 And the last sort of area. You raised the question of claimants keeping
16 their records open and the kind of confusion or uncertainty as to when they should send
17 them forward. And I had some of the same feeling in looking over the physicians panel.

18 There's a requirement that a claimant certify the completeness of their
19 own record at some point before it goes forward and I was curious about whether this
20 in itself isn't a substantial barrier.

21 I'm not sure actually what that means, but it would concern me as a
22 claimant to say, gosh, this is it, when I don't really know what kind of evidence might
23 be useful in the process.

24 MS. COOK: That was a difficult one for us because in fact that was a
25 comment from public comments on our rule from the unions and others, that they
26 wanted to see what was going to the physicians panel. People wanted to see that.
27 They requested to see that.

1 I want to make sure that no one feels like they have given up any rights
2 or that they don't need to go get a lawyer or a physician to review their case file to
3 declare that this is adequate or not adequate. It's more of -- yes, I've looked through
4 it. Move on.

5 So I'm struggling with that myself. And any suggestions from you. It
6 would specifically serve a request that we got during the public comment period that
7 claimants wanted to see their whole file before it went forward.

8 So I need to give them time to do that. I need to know that they're
9 okay with us moving forward. But I don't want to them legally give away something in
10 the process either.

11 Suggestions would be helpful in how to do that.

12 MR. ELISBURG: I don't know if this is the appropriate place to raise
13 the question. Our subcommittee had submitted a report in which it seemed there were
14 three questions that were left open that had to be answered by the Assistant Secretary.
15 And I don't know if we have you later or if this is the time to ask.

16 MS. COOK: Go ahead. I'm going to be around. I'm trying to stay for
17 the full meeting.

18 MR. ELISBURG: Okay. I can raise them then, but give it quickly.

19 One of them you responded to, referring to the number of cases that
20 you listed. The second one was one that when you talked about the -- you were giving
21 us a rundown of the non-payors or the non-available payors. The specific question was
22 where do you stand with the question of USEC as a payor or non-payor and your
23 ability to deal with that issue because of so many claims coming out of the Portsmouth
24 area.

25 MS. COOK: USEC. That's one where the Acting Undersecretary for
26 NSA, Len Brooks -- he's looking at a creative way to deal with USEC. We don't
27 have a method for directly dealing with them. However, USEC has a lot of

1 relationships with the Department of Energy, especially from the international workers.

2 So, he feels that he might be able to influence how they deal with this.

3 MR. ELISBURG: So that's still in play?

4 MS. COOK: It's still in play. Yes. He hasn't given me a definite
5 answer yet.

6 MR. ELISBURG: Thank you.

7 The second question was with respect to beryllium claims. Why are
8 beryllium claims awaiting physicians panel evaluation, referring to Undersecretary
9 Mueller's memo of February 1998 which said the DOE would not contest --

10 Jeanne, are you still on the line?

11 MS. CISCO: Yes.

12 MR. ELISBURG: That was your question.

13 MS. COOK: I think it's a great question. And the last time I got asked
14 that in one of the union meetings, I thought it was a great question.

15 I'll just tell you right now. If someone has filed a beryllium claim and
16 some facility has fought it, they need to speak up. We can fix that problem.

17 So in my opinion, there shouldn't be an issue with beryllium claims
18 having to go through physicians panels.

19 On the other hand, if people have beryllium and other toxic exposures -
20 - our rule came out that if anybody who wants to go to a physicians panel can go to a
21 physicians panel. If somebody still wants to do that, I can't tell them, no, we won't
22 fight it anyway.

23 So, we should be paying the beryllium claims. Now what may have
24 been happening is the statute of limitations and those sorts of things may have been
25 playing in with the beryllium claims, but I don't know that. So I do want to cycle back
26 with that.

27 I don't know how to go about it. Whether it's calling these people

1 directly and saying did you not get your beryllium claim paid? What's the deal here?

2 But I agree. This was taken care of a long time ago. Not in the DOL
3 part -- \$150,000 and all that. But the state worker's comp part. It shouldn't be an
4 issue for just beryllium.

5 I'm still going to look into that. It doesn't make sense to me.

6 MR. ELISBURG: Thank you very much. Appreciate that.

7 MS. COOK: One thing I forgot to talk about and that is dose
8 reconstructions and NIOSH. Let me say that up front.

9 We're working this hard. We need a creative solution. That's another
10 place where if you have any ideas. NIOSH will talk today, but they really believe that
11 they just don't have the resources to complete dose reconstructions for those special
12 exposure card folks on behalf of DOE. They're working the stuff that they are
13 specifically responsible for.

14 So we've got to find out a way. Remember, this is a very small group
15 of people though. Unless they're in a special exposure cohort, most everybody else
16 will have had a dose reconstruction if it's a radiation induced cancer. And we can take
17 that information and go ahead and use it. But for that small group of people that are
18 special exposure cohorts that will not have had a dose reconstruction by DOL, it's a
19 presumption they'll have had their \$150,000. They'll have medical bills pays. Still
20 they'll want to come back and go to state worker's comp for unpaid medical bills,
21 although there shouldn't be any of that left over, but lost wages.

22 So basically we're talking lost wages or partial permanent disability.
23 That sort of thing. They want to come back. There is a small group of people that will
24 have had a dose reconstruction.

25 NIOSH has suggested, and actually the Deputy Secretary suggested
26 that there might be some ways we could go, including us hiring our own contractor
27 ourselves but using their processes and procedures in that to have dose reconstructions

1 done. Even if NIOSH is going to do those, they'd put them at the end of the queue
2 after completing all the work they have. So that might mean that that small group will
3 be way down at the end anyway, and that might not be timely enough for us.

4 But the concern that my staff has because of the way this legislation was
5 put in place, it pretty much as DOE out of the process in the sense of not doing dose
6 reconstruction, not selecting the doctors and that sort of thing, having credibility if we go
7 out and hire contractors to do the dose reconstructions. But NIOSH is not going to
8 add that on to theirs.

9 So any suggestions on how we can get some sense of independence
10 and some credibility with those folks if we went out and hired our own contractors to
11 do it, that's the way we'll go with that complication. We're still working that one
12 through.

13 MR. MARKOWITZ: I'm interested in what happens between the time
14 the application is complete and the time that it goes --

15 VOICE: Speak up, please.

16 MR. MARKOWITZ: Sure. I'm interested in what happens at DOE
17 between the time the claimant's application is complete and before it goes to the
18 physician panel because in the rule it says that DOE has to make an initial determination
19 about whether this illness or death of the worker, quote, may have been caused by
20 exposure to a toxic substance. End quote.

21 Does DOE make any determination about -- before it goes to the
22 physician panel about the likelihood of work relatedness? If so, how does DOE do
23 that?

24 And as part of that, aside from employment as an eligibility criteria, are
25 there any other ineligibility criteria that DOE uses?

26 MS. COOK: No. We're not making any decision up front about
27 whether it was likely to cause their illness or not. They have to be employed by the

1 right group of people. AWEs and federal employees don't apply, but contractors and
2 subcontractors do. So that's the first issue.

3 The second one is that there has to be some evidence that they're
4 exposed to a toxic substance and some evidence -- it doesn't even have to be a
5 diagnosis now. It could be just symptoms. So it's very lenient -- that they are sick.

6 So those folks that say I'm not sick, I don't have any evidence of being
7 sick but I was exposed to radiation; therefore I want to go to a physicians panel, those
8 people come off the list. But that's the kind of thing we're talking about. It's just those
9 sorts of things.

10 Now, what happens when the case gets put together, it's not then we
11 look at it and decide whether it's likely to be successful or not. That's not it at all.

12 What happens when we've got our case put together that we think
13 we've got all the information we can possibly get, we've asked all the questions, pulled
14 everything we can get, that's when we go back to the contractor and say you've got 15
15 days if there's anything else you want to -- they don't get the file, but is there anything
16 else you want to send us. You've got 15 days yea or nay. And if you can get to
17 someone like Lynn who can answer you in a day or two.

18 And then after that, the whole thing goes to the claimant to look at.

19 MS. POST: I just have a little question. You had mentioned about this
20 woman in Alaska who didn't understand that because she got injured and had worked
21 in the state of Colorado, that really where her claim belongs or that's where it would be
22 handled.

23 Does the resource center help her or people like her through that
24 process?

25 MS. COOK: Yes, they do. And that's what we're trying to cycle
26 back with. The resource center pulls stuff together. They're not reviewing claims.
27 They're not putting claims packages together.

1 But again, if we can get them all automated, then that will help pull up
2 somehow flashing lights -- here's where your claim fits in. So you're going to go into
3 the Rocky Flats pile and not the Amchitka pile.

4 But there has been some confusion about folks about where they live
5 versus where they worked.

6 This woman had never even worked at Amchitka. She just happens to
7 live in Alaska.

8 MS. POST: It seems to me though there could become an issue at
9 some point in time where you had filed a worker's compensation claim in a state.

10 MS. COOK: Absolutely.

11 MS. POST: And at that point, assuming there is a positive finding and
12 that your office was assisting this person, are you there to assist them to file in the most
13 appropriate place? Meaning the place with the best benefits?

14 MS. COOK: We're going to try to stick to it as the place of last
15 injurious exposure for most states. But it is going to get complicated. I don't disagree
16 with you, because it at times may not be clear at which place was the last exposure.

17 For instance, if someone worked in the early days as Hanford and had
18 some very high exposures and then worked at other sites and continued to receive
19 radiation exposures but really the dose that was very high over a short period of time
20 happened to be early in their career, I think there's going to have to be some decisions
21 made by that claimant on where they should apply.

22 I don't think we're going to be in the business of telling people where
23 they can best receive benefits. I don't think that's our responsibility, nor do I have the
24 authority to do that.

25 MS. POST: But it could become a question, especially if one resides in
26 a different state --

27 MS. COOK: I agree.

1 MS. POST: -- than where one had the injury. Many states will take
2 jurisdiction of that claim even though it didn't actually occur there because the person
3 lives there and you can get minimum contact jurisdiction over the employer.

4 So it seems to me that that's going to happen fairly often. And I would
5 hope that would be something that you all could help a person maybe make the right
6 decision about where to make those claims.

7 MS. COOK: I think that's probably the toughest logistics we have
8 going. What I don't want is to be -- I think I said this before. And I apologize to all of
9 you who are lawyers. What I don't want this to be is the funds getting diverted for legal
10 advice on what to do. The funds should go to the worker to do what they were
11 intended to do. But it's going to get complicated at that point.

12 On the other hand, I still stick to the fact that most of the workers that I
13 know who have retired don't ever leave. You've got more Oak Ridge retired workers
14 living in Oak Ridge than you can imagine. And the same thing with Idaho and the same
15 thing with the Rocky Flats area. The M&O contractors. Not the subcontractors, but
16 the M&O contractors, they stay and they stay forever. And those folks are still there
17 and they contact us on a regular basis to tell us how to do our job. So I know they're
18 still there.

19 So, I think a great majority of our workers are going to be in the state
20 where they -- at least where they did the last of their work. Now whether that's where
21 they received their injurious exposure or not is another thing.

22 But I agree. That's probably our most open-ended part.

23 MR. BURTON: I have a question that's related to this issue that Iris
24 has raised about the decision of the claimant to file for worker's compensation. And
25 you've indicated that at the end of the process or close to the end of the process you're
26 going to ask the potential beneficiary to decide whether they want to go ahead and file
27 for worker's comp.

1 I can see a lot of confusion arising at that point because presumably
2 that's why they started this process many months beforehand. They were interested in
3 worker's compensation. And when they get a letter with some notice that we want you
4 to decide now whether to file for worker's compensation, I can see they're going to
5 have one or two reactions.

6 Either they're going to come back to you and say, well, what's this
7 about, or will you help me decide this. And it gets into a whole range of issues of
8 where do I file this claim. Or if you're not willing give that assistance, they're going to
9 go to a lawyer. Because they're not going to be capable of making that decision.

10 And I guess the question would be if you don't want to divert resources
11 to the lawyers, are you willing to reimburse the beneficiaries for their lawyers' fees?

12 MS. COOK: I just answer that I have no authority to do that nor have
13 any funds been appropriated for me to do that to pay for lawyers' fees.

14 But one of the questions we've been getting actually, and why I would
15 think some people might decide at that point not to do it is that there has been confusion
16 that if you don't qualify and you don't get your \$150,000 from DOL, then DOE will
17 pay you \$150,000 or the state will pay you \$150,000.

18 So I have answered a lot of questions. And we always start up front in
19 these meetings to explain to people that we'll assist you to apply for state worker's
20 comp and the kind of benefits that you normally get from a state worker's comp office,
21 which is unpaid medical bills, partial permanent disabilities and lost wages. And then
22 they go, oh, I didn't get sick until long after I retired. I have no unpaid bills. And yet
23 I've still had people say, but I still want to know if I got sick from work.

24 So there are going to be people who enter into it knowingly up front
25 and say I know that I'm not going to get anything out of state worker's comp and I'm
26 probably not going to go that far, but I do want to go through a physicians panel. I've
27 had some of those come in, too.

1 MS. SPIELER: Let me just clarify. We've had this conversation
2 several times. A retiree with impairment and without wage loss or medical loss may still
3 have entitlement to cash benefits under state laws. So it isn't that I'm retired and I have
4 my medical benefits paid. Even aside from the I want to find out kind of question, there
5 may in fact be financial benefits that that person is entitled to. And it's important not to
6 tie it to wage loss or medical benefits.

7 But I wanted to make that comment because we've heard repeatedly at
8 these meetings from various people that that's the cutoff. And it's not an appropriate --
9 it's not an accurate description of many of the state compensation systems with which
10 you're dealing.

11 MS. COOK: Yes. I will tell you though that I've had -- especially in
12 Alaska, I had a couple of guys come up to me saying, you know, I got sick; I've been
13 treated; I'm doing great; I feel great now.

14 MS. SPIELER: Yes. Some people may choose not to file. I just want
15 to make sure that there's clarity on the staff of this program that there are in fact cash
16 benefits for the retirees who have post-retirement illness that was work related.

17 MS. COOK: There's a lot of confusion. A lot of people thought they
18 were going to get \$150,000 from DOE, too. And that part we need to fix.

19 MS. SPIELER: I understand.

20 John, did you have a follow-up?

21 MR. BURTON: Well, I just want to observe, I guess, that this very
22 discussion right here, the exchange between the two of you indicates why it is that
23 workers are not going to be able to make this decision on their own. This is much too
24 complicated a matter for them to decide whether I'm going to go ahead with this claim
25 or not because they're not going to understand or even begin to understand the
26 subtleties of what we've just gotten into.

27 And so I think either you're going to have to provide fairly extensive

1 assistance to the claimant at that point. If they want to go ahead or not, it's got to be
2 here's the conditions, or you're going to have to assume they're going to get a lawyer.

3 MS. COOK: One of the things that I've been really considering is
4 encouraging each of the states to have -- and we've got points of contact with the
5 states. That's part of the state agreements; how do you get people connected up with
6 the state and to get the state worker's comp offices to understand that when we have a
7 willing payor at the end and all that, so they don't go into a whole bunch of
8 machinations that they don't need to.

9 But for them to have some really good publicly consumable information
10 that explains what worker's comp does in their states so that people at least have that
11 to start from.

12 MR. BURTON: Now we're down to about four states.

13 MS. COOK: I am also not charged with fixing state worker's comp.

14 MS. SPIELER: We all agree with that.

15 MS. HATFIELD: I think in our area in Oak Ridge, because that's
16 where I'm finding that's the kind of workers that I've talked to day in and day out, I
17 guess I'm just curious. I still find that there are a lot of workers who don't realize that
18 there are these claims available to them. They've been turned down by the DOL and
19 they go, okay, I'm not going to get anything.

20 I wonder if maybe you all or if the DOE is publicizing the availability of
21 workman's comp enough that maybe the workers still don't -- I mean, I know it's out
22 there and I know a lot of people have talked about it, but I don't think in terms that
23 these workers really understand.

24 You know, you've been retired for years. Yes, you can get
25 workman's comp. Yes, let us help you.

26 And I think the DOL offices do a great job but I have found through
27 some of the workers that I've talked with that they're not being told. When they get

1 that final letter from the DOL that says, sorry, you don't qualify for this program, they
2 think that that's the end. They don't have any other options.

3 And I really think we have to find a better way of doing that.

4 MS. COOK: I think there's a couple of things that we can do. And
5 one of them is -- that's one of the things we're looking at is the letters we all send out;
6 what the reaction to those letters are.

7 Our resource centers are very, very effective, as are our field offices,
8 because they're the ones that get the questions when someone's confused about a
9 letter.

10 This woman I talked to in Rocky Flats held up her DOL letter. She
11 happened to be a woman who's worked at Rocky for years but happened to be my
12 first secretary when I was like 21 and she was 19. So this is a woman I've known
13 forever.

14 She holds up her letter and said I've been denied by DOE. And I said
15 that has DOL letterhead on it. So I know it's very confusing.

16 I've been down to Oak Ridge twice talking to the workers there but I
17 think that I need to continue to do those things. We continue to give the resource
18 centers better succinct ways to answer those questions. We continue to look at each
19 other's letters that we send out to see if we can clarify. And maybe DOL can put
20 something in their letter that says, you know, consider applying through DOE. And
21 we'll look at ways to do that.

22 But the other thing -- and all of you that work with the DOE current
23 and former workforce know that by far the best way to get the information to people is
24 word of mouth. And as soon as a couple of these claims go through where they've
25 gotten their DOL thing and then they've also gone through and gotten assistance with
26 state worker's comp, that in my opinion is the thing that's going to encourage those
27 people.

1 MS. HATFIELD: I agree with that. I think you're correct. I think if
2 ever we get a claim through that's paid, that when the word starts buzzing, then there
3 will be more people coming.

4 Right now it's still foreign to them and they don't think it's ever going to
5 happen. They really don't. That trust issue is still there and they still don't think this is
6 going to happen. They still don't believe it.

7 MS. COOK: We pushed some claims through real fast, quick easy
8 ones that we could get both the contractor and the claimant, to say yes, it's ready to go,
9 and got them a physician's panel so we could get the physicians panels sort of looking
10 at stuff.

11 I don't want to cherry-pick easy claims to serve that purpose. I really
12 think that people who have been waiting a long time need to have their claims worked
13 first-come first-worked. Just because it's complicated shouldn't mean they have to
14 wait. But it's really going to be useful when we get some of these -- especially some
15 that can move quickly -- get some of these through so the workers understand how it
16 works.

17 MS. HATFIELD: When you talk about first-come first-served, how do
18 you do that? I'm just curious.

19 MS. COOK: By the date they submit it.

20 MS. HATFIELD: Because I know --

21 MS. COOK: But we have a case nurse for each of the different states.
22 So I say by the date first submitted, but we also need to make sure that we have nurse
23 caseworkers divided up equally so that if you've got a place that's got a lot of cases,
24 they aren't moving really slow whereas someone in a state that has very few cases, they
25 can walk in the door and have their case worked the next week because there's very
26 few people there.

27 We've got to get settled out here on how long these cases are taking

1 and which ones needs the most resources. That's why our metrics are so important to
2 us to see how quickly we get cases through so we can tell where the biggest problems
3 are and where resources need to be issued.

4 MR. ELLENBERGER: I'd like to get back to the willing payor issue. I
5 appreciate your response on USEC. We will look forward to your creative solution.

6 I would assume that you've had some conversations with commercial
7 insurers and state claims. Can you characterize their receptivity for taking these claims?

8 MS. COOK: We have had, but it's been limited. And I know we have
9 a meeting coming up. And what I want to do is walk into that meeting with specific
10 information on what the situations are. And that's why we've delayed that meeting a
11 little bit because I want to walk in and say, okay, for Idaho, these are the things we
12 have in place. This is how we pay current workers; this the retrospective policy; this
13 who's covered in the retro policy. And by the way, Wausau holds that policy and this
14 is how we go about it.

15 I want to walk into them with that specific information. And since we
16 haven't had that completed yet, we haven't gotten into too much detail. But we intend
17 to get there real soon. And I think there's a meeting set up for December.

18 VOICE: 13th of December.

19 MS. COOK: Yes. 13th of December. To really try to -- but hopefully
20 that meeting could be extremely productive because we will have all of that information,
21 so then those insurance carries will know what the situation is and they'll be willing to
22 move forward at that point knowing that they are not carrying the risk on those.

23 MR. BODEN: Like you and like John and probably a number of other
24 people around the table, I'm concerned about what workers' reactions will be when
25 they get letters asking them to make decisions, since my experience is that most people
26 are intimidated by these various systems and don't really understand them.

27 In that light, I have a couple of suggestions.

1 MS. COOK: Good.

2 MR. BODEN: One is if you think you need to ask people about
3 whether they want to pursue the workers comp option, because I actually think that it's
4 reasonable to assume that if they ask for the physician panels that they want to pursue it
5 -- so one option is assume they want to pursue it. Because even though there may be
6 some people who really aren't that interested in pursuing it, it will absorb fewer
7 resources and less time to just do it for everybody than to have things lay on people's
8 desks, have them go after to get attorneys and so on.

9 Two, if you're not willing to do that, then write them a letter that says
10 you filed to go to the physician panels. We assume this means that if you're eligible
11 you'd like to get worker's comp benefits. Contact us if you don't within 30 days.

12 And three, also a similar suggestion for the evidence that's going to go
13 to the physician panels. Write people -- my guess is -- or you said there are unions
14 and other people who have said they really want to review this. My guess is that more
15 than 90 percent of people will not want to review it.

16 If you write people a letter and say it's your right to review this before
17 you get it. Whether you review it or not, this will not interfere with your right at some
18 future date to add some evidence to it.
19 If you want to review it, we'll send it to you but then we won't be able to send it to the
20 physician until you're done reviewing it.

21 If you don't want to review it within 30 days we'll send it on to the
22 physician -- or, you know, write us back or something like that.

23 So that basically what you're saying to people is you don't really need
24 to review this but if you want to, you have the right to. And if you don't want to review
25 it, we're just going to take it on.

26 In other words, it has as the base option the process moves forward
27 unimpeded. And only for people who have a specific interest in deciding not to go

1 forward immediately that they would then let you know that.

2 MS. COOK: Very good. Call us or let us know if you have a negative
3 response. I think it gives people a much more comfort zone.

4 I think you're absolutely right.

5 Rick tells me, though, actually what we do do is call people first before
6 we send them the file and ask them that; do you want to. Just to check.

7 MR. BODEN: Oh, good. Well, if you're doing that --

8 MR. CUTSHAW: It's been about 50/50.

9 MS. COOK: Yes. So we're doing that.

10 MR. BODEN: My guess is that most people will tell you, no, I don't
11 want to review it.

12 MS. COOK: But for all of these things where we're asking for input
13 from a claimant, I think that the perspective of asking for a negative response rather
14 than asking for the yes it's ready but do you have any objections, I think puts people in
15 a different comfort zone. I think you're right.

16 MR. BODEN: But also telling them that if they review it or they don't
17 review it that it doesn't end their right to do something later on.

18 MS. COOK: Yes. We tell them that.

19 MR. BODEN: It would also, if I were a person in that position, make
20 me feel more comfortable.

21 MR. WAGNER: Actually, that's the question that I wanted to ask.
22 Are you permitting people, or will you, if they discover additional information that's
23 relevant that they hadn't previously submitted, will they be able to add this to their file?

24 MS. COOK: At some point you've got to go to the physicians panel.

25 MR. WAGNER: Right.

26 MS. COOK: And so you go. And the physicians panel needs to work
27 with the information that's in front of them and not know that two days before their 30

1 days are up they're going to get something else and the clock restarts.

2 I mean, I can see a lot of ways it could get complicated.

3 Having said that, all claimants are told that there is a process, and there
4 is. Hearings and Appeals with in the Department of Energy is where they can go if at
5 the end of the day they get a negative finding from a physicians panel and they believe
6 they have additional information that might affect that. The Office of Hearings and
7 Appeals is prepared to take a look at that.

8 MR. WAGNER: And the Office of Hearings and Appeals is not going
9 to exclude information that might have been available prior to the claimant's certification
10 that their file was complete just on formalistic grounds? They'll take a look at
11 everything?

12 MS. COOK: No. We're working with them to make sure they
13 understand that. We don't want to get in a "do" loop either. You know, that we get
14 ratcheted little by little. Someone gets a negative so they add a few more things and
15 then they had a few more things and we have a few more things.

16 I guess the real question is where does that person go back in the
17 queue. If someone wants to keep adding and adding and adding to their file until they
18 get the answer that they want, do we want them to jump back in at the front of the
19 queue to work their claim or do they go back and get into the line.

20 I think my feeling is they get back in line. And at the end of the day
21 we're going to end up with a dozen or so that just never got the answer they wanted
22 and they're going to keep bringing things up.

23 MR. WAGNER: I think that just as you're describing it, you don't
24 want to create a system that has an adverse impact on the huge majority of people who
25 are not going to be playing that game in order to deal with the dozen or so who might.

26 MS. COOK: Right. We want to deal with it in a reasonable manner.
27 We're going to spend all day just talking here.

1 MR. MARKOWITZ: (Off mike.)

2 MS. COOK: Steve, I was hoping you got the answer for me. You're
3 exactly right. It's very difficult.

4 MR. MARKOWITZ: (Off mike.)

5 MS. COOK: The law itself puts us in a very difficult situation. There's
6 presumed causation for the DOL part of it. But it says you'll go through a physicians
7 panel so see if your exposure caused illness without any opportunity for -- special
8 exposure cohort sort of considerations are presumed -- causation for the part that we
9 have.

10 Plus, there's no -- I have no ability to tell a state worker's comp that
11 these people just presume they're made ill.

12 It's a very difficult situation. You're absolutely right. And the
13 discrepancy is going to be there and the discrepancies between those two things are in
14 the law.

15 Where it's going to get interesting is -- you know, it's the difference
16 between a Paducah worker and a Rocky Flats worker. And you're going to end up
17 with people that worked at Rocky Flats that had a moderate exposure but it's over a
18 very long period of time and it may end up to a situation where in fact it will be
19 determined that their work didn't cause them to get whatever illness. And you've got
20 somebody at Paducah that in fact, the exposure they have may not at all have
21 contributed to their cancer but they have that kind of cancer, so everything is fine.

22 As we talked earlier, the people in our complex are very close. They
23 talk to each other a lot. This is a large community of several hundred thousand people
24 who are very close. And they're going to compare notes and they are going to see --
25 at the end of the day we're going to see people who got paid for very low exposures
26 and people who did not for more moderately high exposures.

27 So, we can absolutely go to a physicians panel with just their

1 background information without a real dose reconstruction. We could do that. I don't
2 know what a physicians panel is going to do with that though. And that's the difficulty.

3 My goal, regardless of the payor at the end and all that kind of stuff, my
4 goal is to give the person the best file possible. So regardless of how it all plays out
5 after that, that they have the best information possible for them to go into a state
6 worker's comp system.

7 I don't know if I can do that without doing a dose reconstruction.

8 MS. SPIELER: I'm wallowing in some confusion that moment, which
9 always leads me to feel like we have to define two pools. One is the willing payor pool
10 and one is the non-willing payor pool. Because in the willing payor pool, the notion that
11 they have to meet certain standards of causation and with turning it over to the state
12 worker's compensation program and it's going to be litigated is I think not the way I'm
13 envisioning this working.

14 I'm envisioning that the physician panel will essentially lead to an
15 agreement by a contractor to pay a claim. And although the claimant filed, it's not sort
16 of really being adjudicated under the state worker's compensation system.

17 And then the other group of people -- I'm trying to find some other
18 way of saying that we're throwing them to the wolves of the state worker's
19 compensation systems.

20 The reason I'm wallowing in confusion in part is that there are any
21 number of places during the conversation that we've had over the last hour and a
22 quarter where the division between those two pools matters. It matters in this
23 conversation about what we do about the special cohorts -- let me just finish.

24 Let me give you another example where it matters. It matters if we tell
25 claimants that they have however much time they need to review their files. If there's
26 not a willing payor and they sit and review their files for longer than the statute of
27 limitations so that they're now over the statute of limitations in that state from the point

1 of diagnosis to the point of filing the claim and there's no willing payor, those people are
2 going to file their claim and suddenly discover that the statute of limitations is a defense
3 that can be raised by the carrier or by the current -- you know, whoever holds the risk
4 for that claim. And we, DOE, will have said it doesn't really matter how long you take
5 to review this file.

6 Imagine the reaction of this subgroup of people, USEC, if you don't
7 come up with a creative solution when they're then told that during the period of time
8 that DOE was processing the subtitle B process, DOE failed to tell them that if they sat
9 on the file, it might lead to a denial as a result of a statute of limitations problem inherent
10 in the state law.

11 I just want to raise that as a sort of -- oh, my God, we really actually
12 have two pools here. And the consequences of each of the things that we've talked
13 about this morning are substantially different if Len is going to carry the claim through
14 and arrange for it to be paid. Sorry, Len. Or if you have a USEC worker who's going
15 to be thrown into a state system without any presumption essentially, no medical
16 expenses necessarily admissible in the state system.

17 MS. COOK: Alaska, for instance. Because they couldn't put their
18 time line aside. That's what they said. So they want us to notify them when we have a
19 positive finding as well as a claimant notify them immediately, too.

20 And they want to be very proactive about it. That was why they want
21 to be notified so that they can call those claimants immediately and say we need to do
22 this now. You need to get moving on this and get your claim filed.

23 MS. SPIELER: Because if you had a positive finding from their own
24 physician earlier, it's not going to be the finding of the physician panel that triggers the
25 potential statute of limitations in Alaska.

26 So, again, there are a variety of places. All I'm saying is there are a
27 variety of places and you have to be very mindful of the potential effect of delay on

1 anyone of these cases actually being fully adjudicated because you don't have a willing
2 payor.

3 MS. COOK: Yes. What Alaska said was that the start date is the
4 finding of the physicians panel. It didn't matter if they were diagnosed earlier or
5 anything else. They wanted to start the clock at that point --

6 MS. SPIELER: I'm not sure if a carrier raised as a defense that the
7 statute of limitations started to run earlier than that date; that they essentially bind the
8 adjudication in that state that way.

9 MS. COOK: I understand. Kate's been working very closely with the
10 state of Alaska comp system on this. And that's why they want to be notified so they
11 can go directly to the claimants. And maybe we can talk a little bit more about this.

12 MS. SPIELER: These are questions that I think we should come back
13 to December 13th. But I just wanted to make sure that as a backdrop on that
14 conversation that we remembered that if there's not a willing payor, we have serious
15 problems.

16 MS. COOK: Let me go back to the point about the special exposure
17 cohorts, though. The law does not provide us -- I mean, it was very specific about a
18 special exposure cohort in DOL. And nothing in there that says that we identify to a
19 physicians panel that they set aside their evaluation for a certain group of people.
20 They're to look at the exposures and the illnesses and see the cause.

21 And so we don't have any direction in this legislation to do that. And
22 so whether there's a willing payor or not at the end, I'm not sure I can go about doing
23 that saying, okay, this is a special exposure cohort, therefore, don't do it. Don't
24 consider cause and effect as you look at it.

25 It's really difficult. I thought I had an easy solution when I thought
26 NIOSH could pick up doing that small group. But it's still difficult and we're still
27 working through that.

1 So anything creative you've got, Steve, would be useful.

2 Anyway, you're not going to get to the update --

3 MS. SPIELER: I actually have one more than that I have to point out
4 and I think it's important for the functioning of the committee. And I apologize. I
5 should have foreseen that this would take longer than 15 minutes.

6 But there have been a series of moments in our conversation with you in
7 which we've discussed the potential of the committee to provide you with some
8 assistance -- that's going to happen December 13th. And I think it's important to
9 publicly call to your attention that the charter for this committee expires January 1st.

10 And it would be useful I think for the committee in terms of the ongoing
11 work of the Department to know what the Department's intentions are with regard to
12 either continuation of the charter, reappointment of the current members of the
13 committee, or whether you intend to allow the committee to sunset as of January 1st.

14 MS. COOK: That's under evaluation and we're working with the
15 Secretary's staff on that. I can't answer that today. I will let you know as soon as I
16 possibly can.

17 MS. SPIELER: We are scheduled for a break at 10:30 but it was
18 intended to be after the reports from the various agency representatives.

19 Does the committee have any suggestions with regard to --

20 VOICE: Proceed.

21 MS. COOK: Proceed? All right.

22 Larry, where are you?

23 MR. ELLIOTT: (By telephone) I'm here but I'm going to have to go in
24 a few minutes.

25 MS. COOK: Sorry, Larry.

26 MR. ELLIOTT: Want me to go ahead?

27 MS. COOK: Go ahead.

1 MS. SPIELER: Yes. Why don't you do that.

2 MR. ELLIOTT: (Off mike.)

3 We're trying our level best to recruit and qualify and nominate a
4 number of physicians who will -- if we can make that number or more, if possible.

5 We recently, as you may know, awarded a special contract to the Oak
6 Ridge Associated University and a team that they've assembled, which includes Dave
7 Mueller and associates, MJW and Associates and Atlantic Technology Limited Group.

8 We've had a very good start, kick-off with that contracting team and
9 the 30 day deliverables that were in the contract which we've identified on our website
10 have all been submitted to us and have been accepted.

11 There are a number of 90-day deliverables that we're anxiously looking
12 forward to to facilitate the through-put of dose reconstructions on the claims. The most
13 critical one of those would be the quality assurance plan. I've been given assurance by
14 the overall team that that will be turned in to us in the next 30 days, so it will be about
15 the 45 to 50 day mark, 60 day mark when we receive it. It will be in advance of the 90
16 day deliverable time frame. So that's good news for us to have that in place before the
17 contractors can submit a completed dose reconstruction to us.

18 We have, as you know, a number of referrals from the Department of
19 Labor for dose reconstruction on the order of about 8500 now. Our dose
20 reconstruction contract calls for 8,000 plus to be completed in the first year. We're
21 receiving about 200-250 referrals from the Department of Labor currently on a weekly
22 basis. We will still realize somewhat of a backlog so we're considering negotiating with
23 contractors to prepare a strategy on how to deal with the backlog.

24 We have a huge effort under way with the contractors to develop a
25 number of site profiles that will be used to augment the dose reconstruction process and
26 facilitate through-put associated questions.

27 Last week we had an advisory board meeting of the Advisory Board of

1 Radiation and Worker's Health in Santa Fe -- made some presentations at that board
2 meeting at dose reconstructions that have been completed. So we can shed some
3 sunshine on how the concept worked, as well as site profiles and where we stand in the
4 development of those.

5 Our contractor has a number of concurrent efforts underway, including
6 conducting interviews, triaging the 8,000 plus claims that we have in regard to how
7 many of those claims we have initial dose information so that the next step for those
8 where we do have that information is the interview with the claimants.

9 In the triage area, we have those claims that as I said we have DOE
10 information. We have that. We're setting up the interviews.

11 If you have any questions, I would like to do that at this time.

12 MS. SPIELER: Questions for Larry?

13 Larry, thank you. Let's see if we have any questions.

14 Questions regarding NIOSH?

15 (No response.)

16 You're off the hook.

17 MR. ELLIOTT: *I can* go on to something else then.

18 MS. SPIELER: Yes. You can do that.

19 Thank you very much.

20 MR. ELLIOTT: I wish you all a pleasant day.

21 MS. SPIELER: Good-bye.

22 I forgot to note before for purposes of the minutes that Laura Welsh
23 came during Bev Cook's presentation.

24 MS. COOK: I would just like to tell you that Pete and I could tap
25 dance together now. We've been to so many meetings together.

26 MR. TURCIC: I would like to just bring you up and give you a status
27 report on the Department of Labor portion of the program.

1 First, just to discuss some things, projects that we have ongoing, some
2 areas where we ran into some roadblocks and trying to work around them.

3 As you can imagine, one of the biggest and toughest issues that we deal
4 with is relative to subcontractors. It's very difficult to verify employment with many of
5 the subcontractors who may no longer be in business and so forth.

6 Some of the things we're doing there is we're working very hard with
7 the DOE. We're in the process of building an electronic database to keep track of all
8 the subcontractors that we can find and identify.

9 In addition, we're finalizing some work with the Center to Protect
10 Workers Rights. They have access. We're trying to finalize a contract. They have
11 access especially for the construction workers or with a lot of the union records,
12 pension records and so forth that would help with employment verification.

13 We've been with ORISE, the Oak Ridge Institute for Science and
14 Education. They have a database and it's been very successful for verifying
15 employment. We now have online access.

16 So when we get a claim in, the first thing the claims examiner does is
17 check the ORISE database in real time and if employment is verified through that then
18 we can move on without any further delays in the process.

19 Another area we've been working and just finalized the process and
20 gotten a number of interpretations from the National Cancer Institute for the special
21 exposure cohorts. And it goes back to the RECA. The Radiation Exposure
22 Compensation Act placed the interpretation of what constitutes any of the specified
23 cancers with the National Cancer Institute. And they've been very good in giving us a
24 quick turnaround when we've run into those kinds of issues.

25 And lastly, we're in the process. Our rule, as you know, was an
26 interim final rule and it's being finalized. We're in the last stages of review at OMB on
27 that rule.

1 Just from an organizational standpoint, we have four district offices in
2 place. In our four districts we have about 146 people, federal employees, and another
3 25 contractors. In the national office, we have about 30 federal employees and 10
4 contractors on board. And in the final adjudication branch we have 36 hearing reps
5 and seven contract staff.

6 Some of the discussions earlier about the distribution of the workload.
7 When we set up our district offices we tried to make our best estimate of where we
8 were going to get claims from and we hit some of it and we missed on some of it.

9 We've gotten considerably more claims from the AWEs that go to our
10 Cleveland office than we ever imagined and we've gotten considerably less from our
11 Seattle office.

12 Hanford -- we just have not received claims. We've done a lot of
13 outreach there. We've done a lot of press. We just do not get -- we're nowhere near
14 the number of claims that we had expected from the Hanford site.

15 Also, we've gotten a lot more claims than we expected in the areas of
16 jurisdiction for Denver. And the way we placed the areas of jurisdiction was based on
17 last employment. So wherever the last employment was, then we basically try to divide
18 regionally and try to balance out the workload.

19 Because of Denver getting a lot more claims, Seattle not getting as
20 many, we've just recently announced that we're transferring jurisdiction for Iowa and
21 Missouri. Those two states, the claims in those two states will now be moved to our
22 Seattle office. And that will improve. We're going to expedite those cases. That will
23 help for the other states that are handled by Denver and also moving those -- we'll get
24 those worked on rapidly.

25 The claims numbers. So far -- and these numbers are as of October
26 3rd -- we've received 34,737 claims. Now, of that, that represents -- those were
27 claims filed on 27,760 workers or illnesses.

1 The breakdown of those claims: 21,400 are cancer claims. And of
2 those, 5,158 were from special exposure cohort.

3 So as Bev mentioned, it's a relatively small portion of the cancer claims.

4 We've received 1365 beryllium claims for beryllium sensitivity and
5 1239 claims for chronic beryllium disease. 396 cilitosis; 429 RECA claims; 7,184
6 others.

7 And the breakdown on that: 56 percent of those are survivor claims
8 and 44 are employees, 44 percent. 56 percent of the claims we've received overall are
9 from survivors. They're survivor claims as opposed to claims from workers.

10 VOICE: So it's 56 percent of the 34,737?

11 MR. TURCIC: That's correct.

12 We made a decision when we started to get our database systems, our
13 case management system, in order to be up and running by July 31st, to develop a basic
14 system. And then we've been enhancing it to get more management information and
15 better manage the claim mode since then.

16 A recent revision. Initially we could only tell what claimants claimed,
17 what boxes they checked on the form. And that was not very useful because many
18 times they'll note a number of things. So now we've gone back and we're starting to
19 get some breakdowns for the other, outside of the four conditions which the
20 Department of Labor program covers.

21 And some of the major areas of those -- and this is based on final
22 decisions so these cases have been adjudicated. Of those, 28, almost 29 percent of
23 them are other lung condition; 19 percent are other, not listed in the table. And some
24 examples. Nineteen percent of the claims filed for other than the four -- the claimants
25 are not even filing for one of the covered conditions. That 19 percent includes things
26 like carpel tunnel, eye conditions, skin conditions, liver and gall bladder conditions.

27 Asbestosis is about 10 percent of that portion of our claims. Chronic

1 obstructive pulmonary disease and emphysema account fore 6.5 percent. Renal
2 conditions are about 5.6 percent. No condition at all being claimed is 5 percent of
3 them. A little bit over 4 percent is hearing loss and about 2 percent are neurological
4 disorders.

5 Now of the claims that we've received since July 31st of 2001, we've
6 issued final decisions approving benefits in 5,477 claims and final decisions for denying
7 benefits in 3,345 claims. We've issued recommended decisions -- and our process is
8 the district office does a recommended decision and then the claimant then is given the
9 opportunity to disagree with any or all or part of that decision. And then the final
10 decision is made by our final adjudication branch.

11 Recommended decisions to approve benefits are 6,272 and to deny is
12 7,370.

13 As Larry Elliott mentioned, as of the 3rd, we've probably sent another
14 100 or so since then -- or more than 100 or so. We've sent 8,400 cases -- decision
15 was made that it was covered employment with a covered disease and those cases
16 have been sent to NIOSH for dose reconstruction. And we've made payments in
17 4,898 cases and paid about \$355 million and nearly \$4 million in medical benefits.

18 The breakdown of the final decisions at this point in time are 62 percent
19 approving benefits and 38 percent denying benefits. Now that will probably change
20 somewhat. We've got a large number of claims that came in early and many of those
21 were these no covered condition. And for a long time we were giving a lot of time for
22 the claimant even to claim a covered condition and we're working those cases now in
23 an inventory reduction program. Those are going to be denials, so those denials will
24 undoubtedly go up.

25 The breakdown of the final decisions, as I said, 5,477 approved and
26 3,345 denied. Now the breakdown for the denials is the vast majority, 2,633 were
27 non-covered condition. It's where the claimant was claiming a condition that is not

1 covered under the Department of Labor program. Three hundred and three were --
2 employment was not covered. We've gotten claims from people who worked in
3 nuclear power plants or steel mills that are not a covered facility.

4 The 305 were the survivors were not eligible. Only 65 were cases
5 where there was -- once we started developing the claim, where it was claiming a
6 covered condition but then insufficient medical evidence to prove that condition. So
7 that's a very small percentage. And 39 were conditions not related to employment.

8 An example there. We've had a number of claims. Someone worked
9 for a beryllium vendor and claims cancer. That wouldn't be in the numbers for the non-
10 covered condition. They're claiming a covered condition. It's just that they work for a
11 beryllium vendor and cancer is not covered for beryllium vendors.

12 Some of the metrics that we have put in place in our goals under the
13 Government Results and Performance Act. For the initial decision, meaning to get a
14 recommended decision, we've set a goal and split for claims filed from AWEs, the
15 atomic weapons employers and from beryllium vendors. Our goal is to process to
16 initial decision 75 percent of those cases within 180 days. And then we have 90
17 percent within 300 days. And for DOE facilities and RECA claims, 75 percent within
18 120 days.

19 As I mentioned, we've been targeting an inventory reduction program,
20 so the last quarter we had some with a big group up front of claims that came in up
21 front that we're working off. Our average time was for AWEs and beryllium vendor
22 claims was 216 days. In the third quarter, though, it was 169 for AWEs and beryllium
23 and 156 days for the DOE facilities.

24 In the fourth quarter, the average processing time for the DOE and
25 RECA was 171 days.

26 The breakdown of the 27,000 cases, almost 28,000 cases. Eighty-four
27 hundred are at NIOSH. We have issued final decisions in 6,990. We've issued

1 recommended decisions, which would now be at our final adjudication branch, in 3,965
2 cases. So that leaves us the number of cases that we have in progress of 7,190 at this
3 point in time.

4 We're on target in our work plan, in our operating plans, to by
5 Christmas be down to what we're calling our working inventory. So that would be
6 within the 75 percent within the 120 days.

7 So basically what we're looking at is by Christmas being down to
8 having on hand at any given time about three months to five months work of claims in
9 process. And based on what we've currently been receiving, that would be in the
10 neighborhood of 5,000 to 6,000 claims in process at any given time.

11 MS. SPIELER: Thank you very much.

12 Questions with regard to the DOL?

13 MR. WAGNER: Would it be possible for you to distribute the
14 PowerPoint presentation that you were talking from?

15 MR. TURCIC: Yes. I'll email it to --

16 MS. SPIELER: Judy?

17 MR. TURCIC: Yes.

18 MS. SPIELER: Great. And Judy, if you could then email it on to the
19 members of the committee, we would appreciate it.

20 MR. BURTON: Is there a website where you keep updating this?

21 MR. TURCIC: Yes. We have our statistics on a website. We are just
22 modifying that to put more in depth statistics with more breakdown by not only claims
23 but cases.

24 MS. SPIELER: What's the website address? Do you know? If you
25 could just include it in the email, then Judy can send it on to us.

26 MR. TURCIC: Yes.

27 MR. BODEN: I'm interested in what the flow over time of initial filings

1 has looked like and where you are now in terms of new filings per month.

2 MR. TURCIC: Overall, it's been pretty constant at anywhere from 300
3 to 400 some claims a week, but a lot of variability in different areas of the country. It
4 will be for a while it seems like we'll get a peak in one area of the country and then that
5 just seems to move. So it's been pretty constant at anywhere from 300 to 400 and
6 some claims.

7 Our Jacksonville office has received a lot more claims than any of our
8 other offices. We always thought that it would be our Seattle office because of the size
9 of Hanford. We just are not getting claims from Hanford.

10 MR. BODEN: Have you sort of tried to understand why that is?

11 MR. TURCIC: Yes. We've done a lot of outreach. I've gone several
12 times up there; talked to the union officials; talked to everybody I could possibly talk to
13 to get a sense.

14 It may be that most people at Hanford other than the beryllium are
15 going to have to have a dose reconstruction. And once more of those cases come to
16 final decisions, then that may pick up.

17 MR. MARTINEZ: You don't think it could be the location of the office
18 being Seattle versus on the other side of the state?

19 MR. TURCIC: The resource center is right there. It's right there at
20 Hanford. It's just that our district office where the work is done, the adjudication is
21 done.

22 MS. SPIELER: Glenn?

23 MR. SHOR: You mentioned of the denials there are about 2600 for
24 non-covered conditions. What happens with those? Do they get a notification that they
25 may be eligible for the --

26 MR. TURCIC: Yes. We've started that probably last March or so. If
27 it's a condition -- I mean, if someone files for hearing loss, we're not going to put in

1 those decisions that they may be covered under the DOE program. But if they're
2 claiming some illness that may be covered under subpart D, that information is put in the
3 recommended -- well, first of all, the first step would be to send a developmental letter
4 pointing out what conditions are covered by the DOL program.

5 In that correspondence we indicate that what they're claiming may be
6 covered -- you know, it's not covered under the DOL program but may be covered.
7 And we give the contact information to file a claim for subpart D.

8 That's repeated in the recommended decision and that's repeated in the
9 final decision.

10 So throughout the process, we learned -- that was something that we
11 learned that we needed to do and we've been doing that in our decisions.

12 MR. SHOR: Could you furnish us with a copies of sort of a template
13 for that correspondence?

14 MR. TURCIC: You can go right on to our -- we put our final decisions
15 -- there's a search engine. We put some precedent setting cases. It's right on our
16 website. And you can see right in there that that language is in there.

17 MS. SPIELER: Greg?

18 MR. WAGNER: Just to extend that a little bit, could you talk more
19 about the coordination with the Department of Energy in terms of assuring that there
20 aren't sort of cases or people dropped in the way since you are not doing a kind of
21 common point of in-take. Is that correct?

22 MR. TURCIC: The cases that are filed, the claims that are filed at our
23 resource centers, those are joint resource centers. So that would be a common in-take
24 point.

25 As far as a common form, that -- we've discussed that. For the
26 amount of work it would be very little payoff. In fact, it would cause a lot of problems
27 that you may not be aware of.

1 We need way different information in the two programs. The two time
2 frames for the regulations. And as you know, forms have to be approved by OMB.

3 We're focusing with DOE and NIOSH on the best way to share data
4 as opposed to trying to come up with a single form. It's very confusing. You wouldn't
5 believe -- we have the RECA claims -- how many people mark that they were uranium
6 workers, which is really limited to the miners, the section 5.

7 So that would be a very difficult thing to try to work out. And really
8 from a paperwork reduction aspect, a lot of the information that's going to be needed in
9 a state program we don't have any need to know it.

10 Another area where we would run into big problems is under the
11 Privacy Act. The definition of survivor is going to be quite different between the two
12 programs. There's no -- we can't give information from someone that may be a
13 survivor under our program that would not be a survivor or would not even file under
14 any other program. But there is a lot of coordination there.

15 Like I said, at the resource centers, people often file at the same time
16 both claims.

17 MR. WAGNER: What percentage of your claims are coming in
18 through the resource centers and what percentage are coming in through other routes?

19 MR. TURCIC: It's probably half, maybe a little bit more than half from
20 the resource centers.

21 MR. WAGNER: Is there any feedback to the individuals who may be
22 filing not through the resource center about the existence or the availability of the DOE
23 program?

24 MR. TURCIC: That's in a lot of the information that we send out and
25 we also place that, like I said, in the decisions where that is applicable.

26 MS. SPIELER: John?

27 MR. BURTON: I want to follow up on a question that Les asked in

1 terms of the flow of the claim. I was surprised. It sounds like you're getting 15,000 to
2 20,000 claims a year still coming in. Do you have an estimate, a working estimate of
3 the total number of claims you're likely to have by --

4 MR. TURCIC: We originally estimated that we would get somewhere
5 in the neighborhood of 80,000 in the first two years, so we're slightly off track for that.

6 MR. BURTON: I think there's an implication of what's likely to
7 happen over here as well if the flow continues to be that significant.

8 MR. TURCIC: We thought that there would be a surge up front and
9 then taper down. And in reality, it was a slower buildup than we expected. And so
10 now we're not sure where the paper will occur.

11 MR. BURTON: So there's been no decline.

12 MR. TURCIC: No. No decline yet.

13 MR. ELLENBERGER: There was a lot of discussion leading up to the
14 enactment of the law about the appeals process in DOL decisions. And I'm just
15 curious as to how you would characterize appeals to denials?

16 MR. TURCIC: At this point in time it's a mixed bag. There were a
17 number of them that the recommended decision is then remanded. It may be a
18 recommended denial. Is remanded back to the district office to do a recommended
19 acceptance. And there's been a few, a lot less recommended acceptances that have
20 been remanded to go back.

21 The way we work that is it depends on -- we don't want the final
22 adjudication branch doing a lot of additional developmental work but if there is a small
23 amount, they'll go ahead and do the additional developmental work and issue a final
24 decision.

25 We're very careful there to make sure that the claimant has the
26 opportunity to disagree with that. We wouldn't do that anywhere where we were
27 reversing a decision. And a number of the cases that I talked about that we sent to the

1 National Cancer Institute, we've gotten interpretations from the National Cancer
2 Institute that certain types of cancers should be considered.

3 Like for example, we had one issue. There was a claimant who had a
4 cancer of the cartilage of the larynx. Normally -- and if you look at the ICD-9 codes,
5 cartilage cancer is considered bone cancer except cartilage of the eyelid, nose and
6 larynx.

7 We got an interpretation from the National Cancer Institute that this
8 particular type of cancer should be considered as bone cancer, so then at the FAB, we
9 reversed that denial and made it an approval. But it's a mixed bag.

10 The FAB has -- and one of the goals there was to allow people to get
11 through the system as rapidly as possible and then if they disagreed with the decision go
12 to District Court. The FAB has met their goal of the final decisions in cases, non-
13 contested cases. They've met their goal 75 percent within 75 days of receipt. And the
14 claimant gets 60 days to decide whether they're going to file any objection. So
15 they've met that.

16 The number of hearings has started to increase now. Originally the
17 number of hearings were hearings based on non-covered conditions. We expect now
18 as we start getting dose reconstructions back that we're going to start getting hearings
19 relative to aspects of the dose reconstruction or aspects of the probability of causation.

20 MR. ELLENBERGER: What's the experience in terms of attorney
21 involvement in these cases?

22 MR. TURCIC: It's very little so far. Some people are represented by
23 attorney but so far the vast majority of people have not been.

24 MS. SPIELER: Steve?

25 MR. MARKOWITZ: (Off mike.)

26 MR. TURCIC: That gets to the question I have about Hanford. We're
27 doing everything that we can to find out why but the only thing that we think is a

1 possible explanation is that in the facilities where there's now a -- like at Oak Ridge
2 there's a special exposure cohort and the non-SEC and those people may tend to file
3 because they know that people are getting benefits.

4 So we're thinking that maybe once we get more dose reconstructions
5 done and probability of causations and benefits awarded that maybe that will pick up at
6 some of those other sites.

7 MS. WELCH: Of the cases that you've decided, I would guess are
8 most of the beryllium and special exposure cohort cancers.

9 MR. TURCIC: That's correct.

10 MS. WELCH: You said something about getting some dose
11 reconstructions back. But from what Larry said, it didn't seem like there could have
12 been very many.

13 MR. TURCIC: It's not that many. I think it's about 12 so far.

14 MS. WELCH: And when you have those like 120 days, that's
15 obviously doesn't include getting the dose reconstructions back.

16 MR. TURCIC: That's correct. That's the 120 days to get it to the
17 point that it goes to NIOSH.

18 MS. WELCH: And of the total number of claims, how many are the
19 AWE and beryllium --

20 MR. TURCIC: I don't have that with me but we can --

21 MS. WELCH: It's more than you thought?

22 MR. TURCIC: Yes. We've gotten a lot more claims from AWEs than
23 we initially -- that was an unknown out there of how many people worked at those
24 facilities and at beryllium vendor facilities.

25 MS. WELCH: Because some of the AWEs are people where only a
26 small proportion of the people that worked for that employer would actually be
27 covered --

1 MR. TURCIC: That's correct.

2 MS. WELCH: -- because of the narrow part of the employment. So
3 you have a system you think that doesn't collect all the information for dose
4 reconstruction because a person is not eligible --

5 MR. TURCIC: The way we work the process is -- and we've learned
6 as time went on in order to speed things up. The first determination we make is are
7 they claiming a covered condition. If they are claiming a covered condition, then we
8 start looking at employment verification and developing the medical, but are they at
9 least claiming a covered condition.

10 MS. SPIELER: Thank you very much.

11 MR. TURCIC: You're welcome.

12 MS. SPIELER: I'm torn here about this great question but it seems
13 unfair not to get to the DOJ completed now since it's really short, if someone's here to
14 give it.

15 Claudia, are you on the phone?

16 MS. GANGI: (By telephone) Yes, I am.

17 MS. SPIELER: I'm sorry. I'm looking around the room thinking
18 where's Claudia. I apologize.

19 Why don't we take your report and then take a quick break.

20 Go right head.

21 MS. GANGI: Okay. I'll be very brief.

22 Good morning. It's still morning, so good morning.

23 I want to thank you for putting the Department of Justice on the agenda
24 today. As everyone knows, our role is very limited and perhaps not on point for the
25 issues that you address as a committee, but it's nice to get a look at the full picture of
26 the statute and how it's operating.

27 And as Pete said, if I quote the number properly, there've been 4,029

1 RECA claims that have come through for the additional money from the Energy
2 program. Because of that, we do have a consistent flow of work coming through the
3 Department of Justice from the Department of Labor.

4 To date, we have received just over 2400 requests, requests for 2400
5 claims. And we've managed to stay apace with our responses to those requests for
6 information.

7 We can see from the dates of the RECA decision that outreach on our
8 end is working because we're seeing a lot of claimants with more recent approval dates
9 on their RECA claims. And every two weeks we send out packages and information
10 to everyone who's been approved during that two week period with an explanation of
11 the Energy program and claim forms -- and that appears to be a successful outreach
12 effort on our part.

13 We do have a good close working relationship with the Department of
14 Labor and as issues arise we address them. It has run rather smoothly. Over the past
15 year, I think both agencies are proud that the work that's been accomplished.

16 I really don't have anything else to contribute that is in keeping with
17 your specific discussions today but I'd be happy to answer any questions if anyone has
18 something they'd like to put on the table.

19 MS. SPIELER: Questions regarding DOJ processing?

20 (No response.)

21 Claudia, thank you very much.

22 MS. GANGI: You're quite welcome.

23 MS. SPIELER: My suggestion is that we take a 10 minute break now
24 and then spend an hour before we break for lunch hearing Steve Perry's report.

25 (Whereupon, a recess was taken.)

26 MS. SPIELER: Okay. Reconvening this meeting.

27 It's been suggested that we have a very brief break for lunch for people

1 to take care of things like checking out, but that we then work through the rest of lunch
2 because several committee members have told me that they need to leave in the 2:00 to
3 3:30 range.

4 I'm not actually sure -- I believe, Judy, having noticed the public
5 hearing for 4:30 that we're obligated to the 4:30 time.

6 MS. KEATING: Yes, we are. And we actually do have two people,
7 at least two, that are scheduled to speak during the comment period.

8 MS. SPIELER: Okay. But in terms of discussion by the committee, I
9 don't expect that we will actually adjourn by 2:00 but to the extent that there are things
10 that people want to discuss who will be leaving -- let me just have a show of hands.

11 I know Laurie was going to have to leave. Glenn has to leave about
12 3:30.

13 So we're looking at 2:00. So that's actually -- five of the committee
14 members actually are going to be gone by 3:30. It's unfortunate that we didn't
15 anticipate that and set the public hearing earlier in the agenda so that we could work
16 around it.

17 MR. BURTON: Could we -- the two people we know are testifying,
18 we could do them presumably before 4:30; right?

19 MS. SPIELER: Yes, we could, assuming that there're here.

20 MR. BURTON: We just have to keep it open until 4:30 in case
21 somebody calls in.

22 MS. SPIELER: Right.

23 Okay. Steve, you and I talked for a minute during the break and it
24 sounds as if you and Kate and one other person from OWA --

25 VOICE: Yes. Rick Cutshaw.

26 MS. SPIELER: -- will be -- thank you. -- will be providing
27 information for the next 45 minutes or so. And to the extent there are specific questions

1 with regard to this information, we'll take them now.

2 I understand that Steve cannot stay through the afternoon but that Kate
3 and Rick can. And so we can carry over some of the specific issues that the committee
4 may have concerns about into the afternoon.

5 So, Steve --

6 MR. CARY: Thanks.

7 MS. SPIELER: Could we hold our questions until all three of you --

8 MR. CARY: No. I think you can deal with questions to me and Kate.

9 And then Rick's area is sort of a special area. It's the records issue and things.

10 There's been a lot happening here since the June meeting. Of course,
11 the rule has come out and Kate is going to be talking about that shortly.

12 I also wanted to mention that we have the pleasure of having Dr. Regif
13 Venkaya, who's a presidential Fellow, who had to leave at 11:30, who's really given us
14 a lot of help on the project. And Dr. John Ellis -- is John still here? -- to help on our
15 physician panel.

16 What I'd like to just summarize is a lot of what Bev had talked about
17 earlier. What the rule really did was create a process which really is a pipeline, and
18 we're in the process now of getting people into that and through it. And Pete was able
19 to have operating data about the success of his program. And I think over the next
20 several months we'll begin developing that data ourselves.

21 As Bev talked about it, we're getting the applications worked, first-
22 come, first-worked. We're getting medical releases. And then to the field offices for
23 the employment verifications, the medical records and the employment records that help
24 us with the exposure determinations.

25 Our target date working with the field offices is 60 days for that. Once
26 the files are completed then we go through the path that Bev also described: contractor,
27 15 days. We're hoping to do that in less time than that, of course. And then the time

1 for the worker review. And then, of course, once it goes to the physician panel, the 30
2 days for the physician panel.

3 So you're really looking at a pipeline that's anywhere from two weeks
4 to 100 days or more long. And I don't have enough information to date really to give
5 you any specifics about that. But that's sort of where our focus is going to be over the
6 next couple of months.

7 But the big new since June has been the work that Kate and our
8 department has done on the rule, so Kate's going to describe a little summary of what's
9 happened and answer your questions about that.

10 KATE: And there is in your packet a snappy visual aid. The rule looks
11 so nice and diminutive in Fed Register form. It is not the portion on crop insurance,
12 although it would probably be faster to discuss.

13 Let me start firsts actually because people understand that our
14 attorney's opinion has been throughout that in order to actually operate physician panels
15 for any given jurisdiction, they're virtual panels. So an Iowa panel won't be located in
16 Iowa but rather reviewing claims from Iowa. And it could be any three physician
17 assemblies.

18 So the work will be virtual but in order to operate on a given state
19 about a given state for causation, we have to have state agreements in place. In your
20 packet is also a copy of the completed state agreements.

21 We identified the 15 states for which the vast majority of our claims at
22 the L'Enfant Plaza operation have come from. Now, that's whether they're state only
23 or state-federal overlap. There are 15 jurisdictions in which most expressions from
24 help have occurred. And as Bev has pointed out and the committee helped further,
25 elucidate is the wrong word. Obfuscate.

26 The difficulty on what state someone might need a review or an
27 application in is at times a moving target. Iris is of course right about the ability to claim

1 in a state where you live, but our ability to compel a payor in that state may be in
2 question if you worked for a facility.

3 So let me first tell you about the MOUs we have in place, which is sort
4 of very good news. We're very happy for the cooperation we got from states, many of
5 which are states you all are from.

6 In no particular order: Ohio, Kentucky, Iowa, Colorado, California,
7 Alaska, Texas, Washington, Tennessee, New Mexico and Nevada have completed
8 agreements which are signed by Bev and either the Administrator or Governor. And
9 those are in force right now.

10 We have agreements reached with South Carolina and Idaho, and
11 those are probably finding their way to either Loretta or my office while we sit here.
12 They were in the mail. We have to have these over-nighted. Our snail mail still takes a
13 little while because of sanitization.

14 We have a pending agreement in Illinois and a pending agreement in
15 Missouri. Those are yet uncompleted. But we've had very good cooperation from the
16 states and you will see from these agreements that what members of this committee, if
17 we time travel back a couple of years ago, the state agency relations subcommittee had
18 looked at a variety of things that might ought be put in the state agreements. And we
19 were told by our counsel pretty quickly that anything altering or affecting the operation
20 of a state system was not acceptable.

21 So you'll see from the substance of these state agreements that we
22 basically say we're going to be in town operating these panels and we'll let you know
23 what our findings are if you'd like, and will you let us know what data you can legally
24 let us know.

25 The good news for folks who do know state work comp is that none of
26 these states is concerned about the ability to process these claims. Of course, illness
27 claims are very rare for states. But many of you represent state agencies or have.

1 The states are confident in their ability to adjudicate claims. Indeed,
2 some of the states are very happy that they're going to be seeing better, more complete
3 files for DOE workers. There have been states that have been concerned throughout
4 history that they
5 couldn't adjudicate claims as thoroughly or as well as they would like for some of these
6 workers because it was difficult to get records. And the records pieces will come after
7 me. And Rick has many more details.

8 But one of the very important aspects of operating these panels is of
9 course to generate the causation findings, but we're also gathering up individual
10 exposure information and facility information for review by these panels. That same
11 information will then be available for review in the event that an employee elects to file a
12 claim.

13 As relates to the rule specifically, I'd like to highlight some of the
14 differences between the NPR, the notice of proposed rulemaking. I think that many of
15 you were on the teleconference where we discussed the rule.

16 There are a bunch of significant changes, and I'd be glad to discuss any
17 of them in detail, although if we start taking too much time, I'll probably suggest we
18 move this until after the other presentations or you torture me privately. I can certainly
19 take any questions you have. But I think that most of you have probably reviewed this
20 and there are significant and substantial changes, and we feel improvements from our
21 proposed rule to this one. And let me identify what some of those are.

22 There are some fairly simple ones like we no longer require unanimous
23 findings from the panels. Two out of three docs will be considered a finding.

24 A significant and important difference, and I know this committee cared
25 a great deal about it, was whether or not you needed a diagnosed illness to get over the
26 threshold to be considered. And you do not. You need to believe you are ill. And
27 although it's statutorily the case that illness has to be possibly related to exposure to a

1 toxic substance, there could be a case where I never worked around anything toxic
2 ever. I was me, a bureaucrat in a building and never even had the luxury of a tour and
3 I'm claiming something caused by radiation exposure. There's a possibility a claim will
4 fail.

5 To be honest, we haven't seen that happen yet. We are using
6 intentionally a very open process and a very low bar.

7 If a worker says I don't feel good and my symptoms are headache,
8 depression -- you know, things that go with a job, that will advance the panel for a
9 finding a causation. We are content with making certain that the medical decisions are
10 made from medical personnel. And I know that many of you weighed in either in this
11 capacity or other capacities to say that it was essential that we as OWA bureaucrats
12 not practice medicine and decide whether somebody did or didn't have symptomology.

13 So what we are dedicated to doing with the Secretary's leadership and
14 Bev's leadership is making sure if a worker says they're ill and that illness might have
15 occurred through exposures at DOE, the physicians panel will get good information and
16 will make a decision and a determination about causation.

17 I was in work comp in a state system long enough to believe that these
18 doctors are going to do their work, and hopefully do it well. And so we're comfortable
19 saying we have a very low bar for access to the panels but we expect the panels to
20 apply the statute and the rule as written.

21 The other and probably most important other than not having any
22 screening criteria for the ultimate viability of a claim -- and this actually wraps back into
23 one of Dr. Wagner's questions and Les's about automated filings. There are certainly
24 workers that are eligible to have a finding of causation by our physicians panel for
25 whom there will never be a benefit in state work comp.

26 We will not weed those cases out. The easiest example is someone
27 who is a non-dependent grandparent or grandchild who is a legitimate survivor under

1 the statute. But unless somebody here -- and I'm staring at both John and Les. Unless
2 there's a statute that's just changed recently, there's no state comp statute in this
3 country that allows non-dependent grandchildren or grandparents to claim -- it allows
4 them to claim. It will afford them no benefits for the death or illness of a worker.

5 So there is a disconnect and it is both statutory and in the rule between
6 a causation finding and an ultimate filing for benefits. And that is a decision the worker
7 needs to make. And we are dedicated to giving that worker really good advice,
8 meaning not ours. And that is that every state has recommended and some indeed,
9 John, have said call a lawyer. Every state has recommended what a worker in their
10 state with one of these positive findings ought to do.

11 And there are states for which the recommendation is these people
12 should call trial attorneys and we have a list if you don't.

13 Now, we'll let the state do that. We won't ever help someone make
14 that decision. We will get them to the state agency who in almost all cases has
15 individuals, areas or experts that can help.

16 In Colorado, for instance -- in California, we have specific people that
17 are willing and able to answer questions. There are states that have entire shops where
18 you can call for assistance.

19 So a worker will need to make that decision and we hope to provide
20 them through the state agency, not through OWA, with specific help on the state in
21 which they might be filing.

22 Probably the most significant and significantly discussed in our
23 comments portion of this rule was the actual standard of causation. I do urge you to
24 read the preamble because it says why we did what we did to everyone we did stuff to.
25 But the actual standard for causation -- and this is the one I just pulled out of my packet
26 so I'm just going to chat until I find the citation.

27 Okay. It is 852.8, which is discussed in letter "P": what guidelines does

1 a physician panel use to determine whether illness arose out of and in the course of
2 employment.

3 And I think this group will be very happy with what our standard for
4 causation is.

5 A physician panel must determine whether the illness or death arose out
6 of and in the course of employment by a DOE contractor and exposure to a toxic
7 substance at a DOE facility on the basis of whether it's as least as likely as not that the
8 exposure to a toxic substance at the DOE facility during the course of employment was
9 a significant factor in aggravating, contributing to or causing the illness or death of the
10 worker at issue.

11 And I know that people were concerned both that we would use either
12 a uniform or state specific standard and whether we would use a restrictive or
13 permissive standard.

14 This is a uniform standard, as you see. And I believe in work comp
15 terms and we at DOE believe it is a very permissive standard, a standard that will allow
16 workers who have become ill out of and in the course of their employment to receive a
17 positive finding of causation from the physicians panels.

18 It has a great deal of detail in here. A couple of additional changes.
19 There was an appeal in the NPR. There's an appeal process which is internal to the
20 office of hearings and appeals. It's an administrative appeal.

21 The two additions to this process that this group will be interested in but
22 have already been discussed at length are that a worker will see all aspects of their file
23 before it goes to the panel. Not unlike what Larry Elliott described from the NIOSH
24 portion of the process in prior meetings. A worker will see everything that is going to
25 go to the panel and review that.

26 An employer now has an opportunity to add additional information to
27 the file. There's a 15-day window after the file is completed for that to occur.

1 I need to say very clearly this is not intended to be a rebuttal or such. It
2 can be whatever the employer wants. We expect in the vast majority of those situations
3 that there'll be nothing additional to add.

4 There's some unique situations. I think Bev has described one where
5 there was medical testing done for a worker that DOE might not have known to request
6 on this particular worker. The employer can submit things. But one of the things to say
7 very clearly at this point is there is nothing an employer can submit in that 15-day
8 window that will derail a claim that has otherwise met the standards required.

9 You have to be a contract employee or survivor. You cannot be an
10 atomic weapons employee or beryllium vendor employee to come before the panel.
11 And it has to be at least possible that the condition you're claiming was caused by a
12 toxic substance.

13 Those are the only two conditions you must meet to be eligible to go
14 before the panel.

15 As Bev pointed out, workers for whom there may be no benefits,
16 workers that are already being served by another part of the system, it may affect
17 what the ultimate outcome and financial outcome is for a worker. But if you meet the
18 basic eligibility criteria of being a contract employee or sub and having an illness that
19 might be caused by exposure to toxic substances, you will go to the panel.

20 There's nothing about that 15-day employer submission that will derail
21 a legitimate claim.

22 We expect that the physician panel will, and it's clearly identified in
23 here, review everything that is put into that record. That is part of what the good work
24 of these panels is. But both the worker and the employer have an opportunity to
25 review or comment that they did not have in the prior iteration.

26 I think that in summary terms that identifies the major changes from the
27 prior. And I won't give you all of the details unless there are concerns or discussion

1 points that people would like.

2 But there were two issues raised earlier that sort of are subsumed by
3 this and one was -- and Bev answered it, but what about people, for instance, from the
4 special cohort who have a stipulated finding of causation from DOL. They're holding a
5 piece of paper saying my government said they've made me sick. My government said
6 they gave me this cancer.

7 By definition, the special cohort says if you worked a certain time at a
8 certain place and have a certain disease, for the DOL portion of the program causation
9 is stipulated.

10 We asked our attorneys directly if there was a way to embrace, use,
11 demand of the panel that they find consistent with those findings; if there was any way
12 for us to use the other subtitles as part of our subtitle.

13 And the legal analysis -- and there are a bunch of lawyers looking at it.
14 Maybe a legal analysis was no -- okay. A couple. That indeed our requirements under
15 subtitle D were requirements under subtitle D and that we are compelled to determine
16 causation for these claimants.

17 So it's possible that a person who fails the dose reconstruction process
18 at Labor who's told their cancer is not as likely as not caused by radiation, may indeed
19 succeed in our doc panel process. And if there are state benefits available to them, this
20 could help them.

21 It is also possible that workers who have been told yes by the
22 Department of Labor will be told no by our panels. I would be surprised if workers
23 with a full blown dose reconstruction that shows a cancer as likely as not with
24 probability of causation tables and a dose reconstruction -- we can't determine exactly
25 what our panels might say. But that would be very strong evidence as a panel evaluates
26 the evidence on a worker for a worker for whom there was a stipulated illness or
27 stipulated causation as part of the special cohort.

1 I certainly can imagine where there may be inadequate exposure
2 information either available or -- there may be inadequate exposure information to
3 make a connection between an illness and the work at DOE. And although this gives
4 us a great deal of concern, sleepless nights and heartburn, we could find no way around
5 our statutory responsibilities in this rulemaking to make our findings exactly consistent in
6 all terms with the Department of Labor's portions of the statute.

7 And I'd be glad to stand for any questions that folks have.

8 MS. SPIELER: Len?

9 MR. MARTINEZ: Can you give us the Department's definition of a
10 willing payor?

11 KATE: One for whom we can make a meaningful order to not raise
12 affirmative defenses.

13 MS. COOK: One that we can get money to. Anything short of
14 stopping a stranger on the street and handing them a check and saying please hand the
15 check to that guy. Can't do that. But any other way I can get money from me to a
16 contractor, that's a willing payor.

17 MS. SPIELER: Mark?

18 MR. OLSEN: I've got a couple. With a single uniform standard, is the
19 Office of Worker Advocacy contemplating making its decisions a matter of record?
20 Much like, for example, that OHA does with its FOIA whistleblower decisions? Is the
21 Office of Worker Advocacy going to make any kind of a formal case determination on
22 the website?

23 KATE: In terms of how many and what the outcomes were?

24 MR. OLSEN: On individual outcomes. This was covered in this
25 circumstance. This wasn't. To ensure consistency.

26 KATE: I certainly can't answer that.

27 MR. CARY: You mean like a record of decision?

1 MR. OLSEN: Yes.

2 MR. CARY: No. We hadn't anticipated that.

3 KATE: I come from a state program in Minnesota where we showed
4 everything, so other than identifying -- I think in some of our states and our privacy
5 requirements as well you have the quandary we ran into which is if you know enough
6 about me -- you know, a chubby 45-year old bureaucrat who knows work comp and
7 DOE -- you've identified me.

8 And I know in Minnesota, you couldn't in a small town say anything
9 about an amputee working in one of our poultry plants because it would identify the
10 person.

11 So with all the concerns of privacy and the like, it's not clear. I would
12 certain think at some point in the future public review of what our findings were in the
13 species would be possible. I personally would hope as a comp person, but some of
14 these are very unique cases.

15 And as you know, in some of these facilities, if you started saying this
16 toxic exposure with these components you may well be infringing on a person's right to
17 privacy both medically and in this.

18 And we're using other agencies' data and information and findings as
19 well. So within the confines of privacy and the like, I think it's an excellent idea.

20 MS. COOK: There's another aspect to it for me for future reference.
21 There's going to be a lot of information so I have to think about how to say this on
22 Friday to the OC MED docs. There's going to be a lot of information that comes out
23 of this that is going to further the field, if you will, and how do we pull that information
24 together, that kind of trending information, to really make an impact on the field of
25 occupational medicine.

26 This is not a research project but it's certainly a lot of data that I think
27 people could find very useful. And so I'm struggling with that a little bit, too, on how

1 we can move forward with that.

2 So any of you who are -- people like you, Steve. If you're in those
3 fields and can think of a way that we can pull it together, we'd welcome some input on
4 that.

5 MR. OLSEN: In 852.16 and 17, those sections deals with
6 circumstances under which -- the program office will or will not accept the
7 recommendations of a physicians panel. And I was just wondering under what
8 circumstances you are going to obtain additional information such as referred in dot 16
9 or significant evidence to the contrary.

10 KATE: We anticipate that that will be one of two situations. One is
11 where the worker would come forward to Steve, the Director of the Office, in whom
12 the authority is vested, and say wait, they evaluated this without this important piece of
13 information. That could either be something the worker had or something that's been
14 generated since.

15 I think that we anticipate as we discuss the rule in the final inception of
16 these processes that the vast majority of these findings will be accepted. There will be
17 nothing willy-nilly. And we will not as an office seek to enhance information for a
18 negative or positive finding.

19 We assume we'll accept that. And if someone were to raise significant
20 evidence, if the worker would say, wait, this negative -- you clearly missed what's
21 going on. Or I guess in a rare instance if somebody has significant evidence against a
22 positive, it would be reconsidered commensurate with the statute and rule.

23 MS. COOK: I could see a situation, for instance, we don't want to
24 stop anything in the works. But I was referring to the D&D operations. If in the course
25 of doing something we run into some building at Rocky Flats that had stuff in it that
26 nobody had anticipated, so we have some claims in process that may have been denied
27 but in the middle of that we found asbestos where we didn't expect it, that gives us a

1 right here at the end to say wait a minute. Something's happened while this is at the
2 physicians panel that we need to add.

3 MR. OLSON: And this is my last one. In 852.5, the employer is given
4 an 15-day opportunity to provide input at the early end of the decision. Is there going
5 to be an opportunity for the employer to review the physician's panel?

6 KATE: There is not. There is not currently. There certainly could be
7 something in a procedure or policy that isn't reflected as a direct edict or mandate in the
8 rule. But there is not currently.

9 MR. MARTINEZ: Given the comment that Bev just made with respect
10 to there may be during the course of D&D, for instance, there may be discovery of
11 material that wasn't originally thought could be where it was. Not that that ever
12 happens.

13 I would be concerned about asking the contractor to certify that there is
14 no more additional information available, which is what you ask the contractor to do
15 with in the 15-day period of time. So you might want to look at the language in the
16 form that says you, the contractor, now certify that you have no other additional
17 information to add.

18 KATE: But doesn't that certification in that context equal that you have
19 access to a no ballot? We're not looking for perjury here.

20 VOICE: Those changes have already been made at the suggestion of
21 the Idaho office and your office. And the language I think since the initial forms that I
22 think some people have seen have been changed to reflect that we have no additional
23 information to add at this point. And that's all it says. You don't have to certify
24 anything.

25 MR. WAGNER: Is that for the claimants also is that only for the --

26 KATE: That's for the employer during that 15-days.

27 VOICE: That's strictly from the employer. And they merely sign-off

1 and say I have nothing else to add at this point. There's no certification involved.

2 KATE: The claimant doesn't need to so certify, Greg, because they
3 could continue ostensibly. This rule and statute don't prevent a worker from working
4 for an additional review next year.

5 Now if there's no new information at all, I would expect the review
6 might come out consistently. But there certainly isn't any prohibition on multiple
7 reviews, as written.

8 MS. SPIELER: Steve?

9 MR. MARKOWITZ: I have a couple of comments and a couple of
10 questions.

11 I do think that you said, Bev, that there's something here we can learn
12 from. Being a national industry we have a quasi-national process of identifying -- some
13 thought might be given to identifying data, medical data that would be relevant.

14 The final rule is much, much improved from the draft and DOE
15 deserves, I think, enormous credit for that. But most of these that we are concerned
16 about significant changes were made much to the better.

17 Now, for the questions.

18 The physician panel. Are a given set of three physicians being assigned
19 to a given facility?

20 KATE: No. It is random assembly. And it literally is based on
21 people's availabilities and their capacity. They are virtual assemblies, so at any given
22 time, Iris and Laura and Len could be on one panel and Laura and Len and you could
23 be on another hearing cases at the same time for different facilities.

24 Since there is a uniform standard for causation, that finding will be
25 uniform. The facility information that we hope to gather and refine as we go through
26 this, in addition to the individual information if I worked at Oak Ridge, we want to have
27 information about Oak Ridge.

1 We're hoping obviously that we're able to provide good enough
2 information about the processes and exposures a worker might have gotten at a
3 particular facility that actual specific facility expertise by an individual won't be
4 necessary is what we're hoping to be able to provide.

5 MR. MARKOWITZ: So since you're beginning to send these to
6 physician panels, let's talk about that. How are you training the physicians about what
7 goes on at these facilities? And especially where I think a lot of the claims would have
8 superficial information about exposure -- and not much more.

9 The physicians are in a difficult situation.

10 MS. COOK: Let me talk to that because that absolutely should not be
11 the case. Shouldn't say you worked in 707 and they did this. It's almost irrelevant
12 what they did. It is what were they exposed to when they were doing that work.

13 And I expect these cases to have that information. I do not expect
14 physicians to be operations folks. I don't expect them to have expertise in how you
15 build a nuclear weapon. I do expect that our case files will have all of the toxic
16 substances that were in this person's work world and the form that that material was in.

17 They were handling encased uranium materials or were they machining
18 it and exposed to fines. Those sorts of things.

19 If we are turning cases over to physicians that only describe a building
20 name and a kind of work then we have not done our job. So I do not expect
21 physicians to have that expertise.

22 The other thing. If we are counting on the physicians to have a
23 complete understanding of a facility, that means that we can't fully utilize all the
24 physicians. We need to have the expertise of these physicians as physicians, not as
25 experts on what complex.

26 I want to fully utilize all the people that are available to us, so we need
27 to be giving them the best information possible and not divert their attention to trying to

1 understand how you build a weapon.

2 MR. MARKOWITZ: So on the occupational history --

3 KATE: I was just going to say look at -- yes.

4 MR. MARKOWITZ: Are some of those details reflected? And how is
5 it developed? In many of the medical reports you have from physicians may not have
6 this kind of detail.

7 KATE: If you look at 852.4, Steve -- and it may not be adequately
8 detailed -- but under number 4 in that, and the preamble talks a little bit more about
9 this, for workers for whom it is possible. And I think in our discussions between NPR
10 and the final, it was understood by many to be less possible if a worker were deceased.
11 But when possible, a full occupational history like those currently done with the former
12 screening programs is one of the responsibilities of the Office of Worker Advocacy to
13 provide.

14 If a worker has one it must go into the file. If a worker doesn't have
15 one, it's incumbent upon us to try and get such a history so that to the extent possible
16 and available these reviewing physicians will have a good occupational history which
17 ought to specifically deal with the processes and procedures I did, in addition to the
18 facility information, as Bev said, that ought to show what the possible and observable
19 exposures were at that facility.

20 MS. COOK: Let me just add to that. One of the things that I talked to
21 a lot of workers about, it's critically important to me that workers file a claim or file
22 information into the process not only for their own file but for their co-workers. I've
23 talked to a lot of workers about that.

24 Even if they don't necessarily want to report it but they have a lot of
25 information on what went on in that facility in the early '50s, we need that information
26 because our sites are putting together facility specific information over a period of time
27 and the D&D information fits into that. And other workers' information fits into that.

1 And I've talked to many facilities where they said they were getting a
2 good profile of what went on in what building at what time so that it's easier and easier
3 for us to pull together the case file.

4 But I think I talked to you before about my friend that had worked at
5 Hanford that ended up in Idaho that had radiation induced cancer and passed away in
6 July. We wanted to make sure that he talked to the folks at NIOSH and they did talk
7 to him right away to get his information to them while he still had time to. Not because
8 he wanted to claim but because he wanted to make sure that that information was
9 utilized for other people's claims.

10 So that's why I'm really pushing the workforce to get their information
11 in to help each other build these cases.

12 MR. WAGNER: A couple of questions.

13 In the panel process is there independent review by each of the panels?
14 Is there any interaction among the panels?

15 KATE: We will not physically assemble them, although they will know
16 who the other panel members are. They're certainly able to speak at length via email
17 or telephone.

18 Each panelist will be given the full set of information, everything that
19 was submitted into the file by the worker, so that they can fully evaluate if there is a way
20 to identify where some of the important portions of the records are.

21 MR. WAGNER: But there's no obligatory interaction among the
22 panelists?

23 KATE: There is not. There is to the extent that one individual will need
24 to -- I believe our process currently is that the individual of the three will discuss with
25 the others their findings and submit findings of the panel. So that interaction is
26 compelled. But I could be one of the docs and not talk to the others, just tell the person
27 my findings.

1 MR. WAGNER: You addressed the issue of missing but obtainable
2 occupational history information. What about additional medical information?

3 We spent a fair amount of time in the physicians panel subcommittee
4 talking about that. If physicians panels -- I mean, it seems to me that some cases are
5 clearly recommended yes. Some are clearly -- there's really little basis for a
6 recommended no. There may be gray area cases where additional evaluative
7 information would be helpful.

8 What are you going to do with those?

9 KATE: If the information that's requested is specialty information, you
10 just plain need to talk to somebody who knows exactly what to do in these kinds of
11 illnesses or exposures, under 852.10 --

12 MR. WAGNER: The question isn't --

13 KATE: You want additional medical information.

14 MR. WAGNER: Right. There's an additional test; there's an additional
15 -- that we can't make this decision at this point.

16 KATE: If there is additional medical testing required if that worker is
17 currently eligible for Steve's other hat, for any of the former and current worker
18 screening programs and it's an appropriate test to be done within those, DOE will assist
19 in terms of getting that person the help that way.

20 There are certainly some things like a chest film that might be obtainable
21 through current insurance mechanisms. There is not in this rule nor did our attorneys
22 feel there is in the statute the ability to do medical ordering and expenditures
23 commensurate specifically with the panel process.

24 So the panel cannot order tests; cannot order that a worker have a
25 certain test.

26 MR. BODEN: Can you explain just what your attorney said in the
27 statute prohibited DOE from doing that?

1 VOICE: There's a word "assist" somewhere in the statute.

2 KATE: There is assist. And this was -- and I'm not trying to put
3 attorneys on the spot. When there were discussions about what that might mean and
4 the questions had to do with how the Office of Advocacy might properly spend its
5 resources, we're authorized certainly to reimburse claims that come through our typical
6 contract mechanism.

7 If Len or Mark are able to accept claims for which they might
8 otherwise have raised defenses, Bev can fill their coffers back up. That's the kind of
9 expenditure we can make within this rule.

10 There is no legitimate medical expenditure authorized or appropriated in
11 subtitle D for medical testing, is I believe our position.

12 MR. BODEN: Just briefly, it seems to me that if there is an
13 authorization to spend money on the physician panel and the physician panel says they
14 need an extra test -- I'm certainly not an lawyer and I'm talking to somebody else
15 who's not a lawyer -- it isn't clear to me why such testing would be prohibited.

16 KATE: I think not authorized as distinct from prohibited.

17 MS. SPIELER: I think this is a resolved issue that we really can't affect
18 at this point. The rule does not make any provision for this.

19 I actually think this as an issue on which lawyers could easily disagree.

20 KATE: Unlike most other issues.

21 MS. SPIELER: Right. So the notion that there's a single legal
22 interpretation of the statute would be probably false. In fact, the lawyers who had
23 influence over the final drafting of the rule hadn't particularly viewed the statute as a
24 different one.

25 KATE: I was going to say I'm certainly operating under a single legal
26 interpretation.

27 MS. SPIELER: Kate is compelled to operate under that single legal

1 interpretation unless that's challenged in some other forum.

2 MS. COOK: Let me make my spiel at this point, too, about there are
3 lots of things that we can anticipate might not work in this. Let's see what really
4 doesn't work. We're just getting started. Haven't seen anything where someone has
5 said I don't have enough medical information. I think more to the case will be I don't
6 have enough exposure information to relate to the illness. It will be that kind of thing I
7 think more.

8 MS. SPIELER: The issue of whether the physician panels thing that
9 there's inadequate medical information in the file is one that hasn't been tested yet. So
10 whether we might not have seen it yet is it's not there yet.

11 Don, you had your hand up a while ago. Did you want to --

12 MR. ELISBURG: I think there were two questions that I had.

13 One is something that Secretary Cook just mentioned. It came up with
14 our discussions with staff on the subcommittee on claims, and that is the collection of
15 information that in effect becomes equivalent of a site profile that other people may be
16 able to use without then going into a whole 'nother line of discovery.

17 If that substance is being used there, that should be sufficient and
18 without having to go back and search the records the third and fourth time.

19 The question is when and how that information is going to be available
20 to the claimants, either through the resource centers or some other process.

21 I think it was Josh who said that whatever information is available is in
22 the site analysis, but whether the site analysis would be available depends on either your
23 review or somebody's review for security purposes.

24 MS. COOK: The site profiles are certainly available for a claimant who
25 comes in and says I worked at this site and I got this kind of illness. We'll pull out
26 everything we can possibly do to put it in their case and they'll get to review that whole
27 case file.

1 Now, the other side of this -- and let me just say again right now up
2 front, my goal personally is to make sure this works and helps every single person that
3 deserves and needs help. These are my friends and colleagues and it's very important
4 to me.

5 The other side of it though is we start putting up site profiles on a
6 website and you have people who want to do something maliciously or shopping
7 around to see where they can best insert themselves to best come out and gain
8 something at the end. I want to help the people we can help. I don't want to sort of
9 facilitate the gaming at the other end of it.

10 So it's a little difficult. We have to do this in a conscientious way. But
11 Rick's going to talk a little bit about how we interface that information when he talks
12 about records here in a minute and how we pull that in.

13 I don't want to suggest that we have people out there trying to do
14 something malicious but you know that there will be a time when somebody's going to
15 shop for information.

16 KATE: Les and others, I apologize for not having had this in a quote
17 form when you ask. Question Q in the preamble addresses DOE and medical testing
18 and says part D does not authorize DOE to create a new program for examination and
19 testing of applicants, nor does it authorize appropriations for this purpose.

20 DOE believes that the program office's rule is to assist an applicant in
21 obtaining and assembling existing information relevant to the claim, including
22 employment exposure and medical under the control of DOE or its contractors;
23 information provided by the applicant; and info from outside sources whose transmittal
24 to DOE has been authorized.

25 So that's the more succinct or less succinct legal answer to your
26 question.

27 MS. SPIELER: Other questions specifically with regard to the

1 physician panel rule before we move on to Rick?

2 KATE: Donald, you had a second one, or --

3 MR. ELISBURG: Well, in terms of this question of -- you probably
4 covered this the two hours while I was gone. But having said that, have you given any
5 thought to the question of the agency can make any use of the factors and can take into
6 consideration that Congress made a determination that you if couldn't figure this out,
7 could the agency not say, all right, Congress made this finding. We're going to make
8 this a presumption for purpose of subpart D to move the process along so we can pay
9 the claims.

10 KATE: That specifically was answered by our counsel for purposes of
11 this rule. And the answer was that any findings in subtitles A, B and C are by law not
12 binding on subtitle D. And we're compelled to vent claims according to the subtitle D
13 requirements.

14 MR. ELISBURG: I was asking a slightly different question. It was not
15 the question of whether they're binding. I understand that issue. They may not be
16 binding. But does that necessarily preclude the Department of Energy from making its
17 own determination based on a Congressional finding, we're not going there. And we'll
18 simply take that as our own presumption.

19 KATE: We may not take it as a presumption. We must look for
20 evidence of causation on our own was our legal finding on that. We may not take a
21 finding from another portion.

22 Now that finding certainly will be part of the record that went forward.
23 But if we ask our doc panels from merely a Department of Labor subtitle B special
24 cohort letter to make a finding and they did their work according to this rule, they
25 would not have enough evidence to show causation.

26 You bring up a very good point, Donald, which is the statute stipulates
27 there may be an adequate exposure record to do a dose reconstruction, therefore,

1 we're still compelled to look for the individual information, the facility information and
2 the medical information on that worker.

3 MR. ELISBURG: I'll just put that back in Emory's category of
4 indeterminate.

5 KATE: At least one lawyer said.

6 MS. SPIELER: Right.

7 Glenn?

8 MR. SHOR: I have a few questions regarding the MOU status.

9 You've alluded to some compacts made between OWA and the states. And what I'm
10 wondering is to date, what if any sorts of trainings have been done with the state
11 ombuds people or information assistance people. Which states have those gone on in?
12 What sort of specific contacts do we have?

13 And then what is there to guarantee that the states will understand the
14 program enough so that when they see a case they can refer it over to you?

15 KATE: I'll take them sort of in the order that you asked, Glenn.

16 The 15 states that I named and a handful of others have sort of come
17 behind; Florida, Massachusetts, New York, New Jersey, some of the obvious ones.
18 I've been individually in touch with the administrators over the last three years. You
19 can imagine how delightful that's been for them as we kept having a moving target.

20 When the rubber really hit the road and we had a rule a couple of
21 months ago, I re-briefed some new people. Now we've had several transitions in
22 several states.

23 The only state that asked for training was yours. And Dick Gannon
24 said I want you to have a training plan for us to come help us so all of our people are up
25 to speed.

26 As you know, California is a massive state and a very complex work
27 comp statues, and probably the most litigious in the country. So that was an excellent

1 idea from Administrator Gannon. And we did not hold up the MOU until there was
2 such training plan. But Dick asked for that and I said absolutely. And this serves to
3 actually properly inform my boss. I said sure.

4 So we have not done that yet. The only state that has asked for that is
5 California.

6 Interestingly, several of the states which are less litigious or have a
7 smaller claims base have expressed absolutely no concern at all about their ability to
8 administer these claims, either because they think that irrespective of a willing payor
9 these workers will get a reasonable adjudication. States like Washington and Alaska
10 are very worker friendly states, or because they just don't see these claims as hitting
11 their radar.

12 States like Iowa, for whom it doesn't appear as though we do have a
13 willing payor, didn't seem to give the administrator any heartburn at all.

14 So in the big picture of life, several dozen or several hundred of these
15 don't seem to be giving heartburn to the administrators. Several states have identified
16 individual points of contact. Several states replied back that they, the Commissioner,
17 wants to remain the point of contact.

18 I will try this week to try to talk them out of that. They really don't
19 want my voice mail. And so I would use my one chit as Commissioner to assign
20 somebody else to that if possible.

21 There may be small enough markets where the commissioner's willing
22 to answer those questions. But on balance, the states -- interestingly, two of the states
23 said the only thing I want to assure is that you don't send me anything or call me again
24 ever unless I ask you to. I don't need to know a thing from you. I'm comfortable that
25 the state of X can do this and when the state of X gets a first report of injury, we'll
26 process it.

27 That doesn't imply -- well, you state people all know what that implies.

1 Really, really old claims without a willing payor aren't that tough for a state to
2 adjudicate.

3 MS. COOK: Now let me tell you the other side of that, too, is every
4 state that I have been to for one of these public meetings, they have a fairly high level
5 person from the state work comp office there sitting through all the briefings, answering
6 questions, asking me a million questions. Those folks who really see it coming and want
7 to understand how this works, they've been there actively involved.

8 Sometimes it takes three or four times to say you really do want to
9 know the outcome, when you have a willing payor not. That's the kind of stuff that you
10 want to make sure it comes with a first report of injury. By the way, there's a willing
11 payor at the end here. Because you might want to look at it differently then. And the
12 go -- yes, yes, we want to know that.

13 So, that whole theory of just in time training, I think some of this will get
14 their attention when they start seeing the claims.

15 KATE: California is also the only jurisdiction -- and Glenn won't be
16 surprised by this. Some others may or may not be, depending on the systems.

17 California wants to know about every claim going to the panel because
18 California is convinced that the outcome of the panel alone will not determine
19 necessarily the outcome of the claimants.

20 MR. SHOR: Yes. That sort of brings up the generic question. The
21 different agreements are different and there are some, in looking through all of them, it's
22 interesting to see some of the things that we probably wish we had asked for. And so
23 some renegotiations can happen at any time.

24 KATE: Absolutely. It's void whenever any party screams uncle, and
25 could be, I suspect, reconsidered assuming one of the signatories is willing to
26 reconsider.

27 MR. MARTINEZ: It's called eclectic bargaining.

1 MS. SPIELER: Other questions with regard to either the state
2 agreements or the rules specifically?

3 (No response.)

4 Let me make a suggestion here.

5 Did the sandwiches come?

6 Why don't we take a break until 1:00 so people who haven't checked
7 out can do that and grab your sandwich.

8 I would like to reconvene even if your mouths are full at 1:00.

9 KATE: She means checked out of rooms, not quit paying attention.

10 MS. SPIELER: So why don't we go do that.

11 Do we each need to pay individually? How do the sandwiches work?

12 Who's being cashier.

13 VOICE: Loretta and I will handle it.

14 MS. SPIELER: Because of the way the reimbursement works, we have
15 to pay for them and then we get paid back. We're not going to discuss this now.

16 VOICE: But you just put it on the record.

17 (Whereupon, the luncheon recess was taken at 12:35 p.m.)

1 AFTERNOON SESSION

2 1:00 p.m.

3 MR. CUTSHAW: Timing is everything, so I'll give you the most
4 exciting piece of this, records and data, right when and after you're eating when caloric
5 poisoning sets in. So please bear with me.

6 We have I think some very interesting and key developments in our
7 data and records profile that should help to answer some of the concerns I've heard
8 this morning.

9 MS. SPIELER: And I think as you'll discover, there are a number of
10 people on this committee for whom data and records is key.

11 MR. CUTSHAW: Absolutely. It's the core to what we're doing.

12 First, I'm a Vice President with Science and Engineering Associates,
13 and as such, we are the management contractor for the U.S. Navy SPAWOR
14 Information Technology Center in New Orleans.

15 The Department sought out the Navy SPAWOR Center to support
16 EEOICPA because of their 20 year history in providing records of promotion, medical
17 records and pay records functionality to the United States Navy. So we've certainly
18 done a lot of work in this regard and that's one of the reasons -- the primary reason
19 that SPAWOR was selected.

20 I think more importantly for you all to know, and just very briefly, I
21 have a 21 year career in the Department of Energy complex. I started in coveralls.
22 I've been a member of two bargaining units on an emergency squad where any time
23 anything went wrong, I went in the building first. And I did nuclear safety work also.

24 So this is very personal to me.

25 MS. COOK: The other poster child for records.

26 MR. CUTSHAW: It's very personal because I'm talking about my
27 friends, my neighbors, my professional peers and colleagues as claimants. These

1 people are known to me.

2 So, that being said, what we're doing in support of EEOICPA is
3 developing an online functionality that basically has four primary components.

4 First is the ability for the resource centers to submit applications
5 electronically to the Office of Worker Advocacy. Secondly, by creating that
6 application we create a master file that tied to an individual through a number of
7 identifiers.

8 Thirdly, we can track and status all activity across the nation then
9 utilizing this master file. And this will help us greatly in cutting down on such things as
10 redundant claims, as we certainly see, or in the instance where we have an active
11 claimant who might unfortunately pass away and then we get survivor claims based
12 upon that claimant. We can then again tie it back to that same master file.

13 And finally, we have a records management function that will allow us
14 to move all of this data around the country electronically in a secure environment.

15 You have to understand the importance of that when you just think of
16 the logistics of these many, many cases and all of the participants; from the resource
17 centers, to the DOE records generators, to the OWA staff and then out to the virtual
18 physicians panels, and nightmare it would be of moving all of that data via sneaker net
19 or FedEx.

20 That's why the vision was to provide an electronic resource to do that.

21 I'm pleased to say that today we turned on the case management
22 system. It's now being utilized by the resource centers. We hope in the near term
23 between now and December to tie in the large DOE site records generators and we've
24 identified 10 primary sites for those.

25 Basically what happens -- and Steve went through the process briefly.
26 But when an application is received, it comes to OWA and we build a physical file that
27 has the key documents and the information that that applicant provided.

1 From that point, we determine whether there is anything else we need
2 from that applicant, such as a medical release. And as you heard Bev say earlier,
3 we've processed thousands of those medical releases to allow us to go on with our
4 information and data gathering.

5 Once we receive those, we then go to the DOE sites of employment,
6 our points of contact there, and we request those records to support the individual's
7 claims. And this is far more labor intensive, if you will, than simple employment
8 verification, as with some of the DOL programs. We're seeking employment
9 information basics; job descriptions to some degree. Because if you saw my title it
10 would say utilities engineer. But if you didn't know what I did, you would not know
11 that I might have exposures that are not common with the title utilities engineer.

12 I didn't simply sit in a place and draw pipe diagrams. So we look at
13 the duties.

14 As part of that profile, we try and gather information on where this
15 individual might have worked at that site, and then the exposure profiles for those
16 particular facilities on the site, in addition to the site profiles. Because we did have
17 different agents being used in different buildings.

18 And somebody mentioned a security concern in regard to this. I can
19 tell you that all of the information that we receive goes through a derivative classifier that
20 assures that we aren't compromising national security in providing this information.

21 We then look at individual medical records. Again, during my
22 employment I had to have a physical every six months because of my duties. So I have
23 a rather voluminous file in the Oak Ridge complex.

24 We then look for generic facility records. That is brought back up and,
25 through the system, will be allowed to be either scanned in on site and sent to us
26 electronically or some sites who already have sophisticated imaging centers will scan
27 this documentation in, provide us with a disk that we will then load into our system.

1 It then goes to the nurse caseworker. They will start the process of
2 vetting this information as far as putting it in the right format to provide to the physicians
3 panels. They are in no way excluding or limiting or culling out information. Everything
4 that's available will flow.

5 Once they do that, then again we will send that electronically or provide
6 it on a secure website through secure access to the physicians panels. They're going to
7 be utilizing dedicated laptops that we're providing. We're going to have security
8 through role assignments. We're going to have security through dedicated ISPs,
9 meaning that a different computer will not be able to hit this website. It has to be that
10 computer assigned to that particular physician.

11 So we've met all of the criteria for handling this type of information and
12 being mindful of Privacy Act considerations.

13 The physicians will be able to exchange information between each
14 other, write notes to each other on the system, bring it all together, come up with their
15 findings, compare their findings and then the lead physician will then be able to fill in the
16 summary report and send that back.

17 So this is basically what we're doing as far as the electronification, if
18 you will, of this process.

19 Currently we are making the transition in working from paper to
20 electronic media. And as anything new comes up, of course we have to walk before we
21 run. We don't have all the DOE records generation sites tied in at this time. Some of
22 the sites are still in the process of developing their internal processes for providing this
23 information to us in electronic format.

24 But that's the vision. And I know there was a lot of discussion about
25 facility profiles.

26 One of the things that this allows us to do is index and sort through this
27 data in a number of different ways that are going to provide efficiency overall to the

1 process.

2 In my case, let's say I worked in -- at Y12 from 1978 to 1982 and I
3 was exposed to methyl ethyl death. If somebody else files an application and they
4 show the same employment history, that will be the first search that we make so that the
5 data that was gathered for Rick Cutshaw can then be applied to that new applicant
6 having worked in the same place during the same period of time.

7 So I'm sure you can appreciate what an efficiency that is.

8 As data becomes available from the Department of Labor, we will
9 again add that to our database so that if an individual has filed with Labor and a record
10 search has already gone on in their case or for whatever reason whatever information is
11 provided, we will have that in our database. And that might support not only an
12 individual's EEOICPA state claim but also other claims for persons that worked at the
13 same places during the same periods of time.

14 So that's the vision and we are working actively towards it. And as I
15 said, today was the first big step in turning on the case management system.

16 MS. SPIELER: Thank you.

17 MR. CUTSHAW: Questions, concerns, comments?

18 MR. ELISBURG: Rick, can you help us get a sense of when you
19 expect, in terms of all these different pieces you were laying out, when you expect to go
20 from a vision to the actual operational system.

21 MR. CUTSHAW: Well, we are operational today. It's our hope to
22 have the major records generators, what we call the 10 big sites, tied in on or about
23 the end of December. But currently we are receiving electronic files from some of the
24 sites and we're in negotiations with the other sites now.

25 MR. ELISBURG: Now are you converting all of the pending claims to
26 electronic data?

27 MR. CUTSHAW: Yes, we are. Our contractor, who also does all of

1 the mail for the House of Representatives, Imaging Acceptance Corporation out here in
2 Warrenton, Virginia, is going to start batch scanning all of our back files probably in the
3 last week of this month.

4 It will take approximately four weeks, maybe five, for them to batch
5 scan what's in our file room now.

6 MR. ELISBURG: All of this stuff is going to be electronic?

7 MR. CUTSHAW: Yes, sir.

8 MR. ELISBURG: All right. At some point as case files going to the
9 contractor or some information is going, and the case file is going sometimes to the
10 claimant. How are they going to get it? I'm asking in what form is this stuff going to be
11 presented to the physicians panels.

12 MR. CUTSHAW: We're sending right now hard copies to the claimant
13 for the simple fact that we don't assume that they have connectivity, that they're
14 computer literate, et cetera. And we have to make a paper file anyway to scan into the
15 system.

16 So we simply copy that. We send it to the claimant.

17 As far as to the physicians panel, this data will be available to them in a
18 case file to access on the secure website. They will be notified that case so-and-so has
19 been assigned to you and this data is now available.

20 MR. ELISBURG: So if I'm one of the physicians looking at something,
21 everything I really need is going to be -- I can pull up on the screen?

22 MR. CUTSHAW: On the website. Yes, sir.

23 MR. ELISBURG: Whether it's pictures or data or something?

24 MR. CUTSHAW: Yes.

25 MR. ELISBURG: I will have the --

26 MR. CUTSHAW: The entire case file will be up there in PDF format.

27 MR. BODEN: It's great to do that you're doing this. Is the system that

1 you're working on, is part of that system going to be the sort of case tracking and
2 performance evaluation system? Is this all integrated?

3 MR. CUTSHAW: Yes. We will certainly draw metrics primarily from
4 our tracking and status component because every key activity when one of the assigned
5 players -- and again, let's be clear about this. This is not universal access to
6 everybody. We have different assigned roles in the process.

7 And let's say, Les, you go in in a role as a caseworker. When you
8 access that file, there's a date and time stamp. And at the bottom of the screen it gives
9 you the opportunity to say what you did there. And if you make no entry, it just shows
10 that you hit that file on such-and-such a date.

11 So we'll be able to develop our metrics from there as far as when we
12 move this file, how soon is it accessed, at what point do they complete this step in the
13 process, et cetera.

14 MR. BODEN: This seems to be then the system that the performance
15 evaluation subcommittee might be able to have useful input into, and I'm wondering --
16 in other words, we might be able to look at it and make suggestions about things that
17 we might want to measure and then you and whoever else is active in this might decide.

18 MR. CUTSHAW: I would certainly invite that.

19 MR. BODEN: How might we go about doing this? What would you
20 suggest?

21 MS. COOK: As I said, in the next couple of weeks, I think what we'll
22 have to you is our view of what that should be, and then we'll try to set something up to
23 have your subpanel talk to us about it.

24 Let us tap dance in front of you and you can tell us whether we're silly
25 or not.

26 MR. BODEN: Hopefully, we'll dance together.

27 MS. COOK: As opposed to standing there with our arms going -- we

1 don't know what to do, and having you tell us that it's hard to review what we've set
2 up.

3 MR. BODEN: That's great.

4 MS. COOK: So we want to have a real strong proposal for you.

5 MS. MUELLER: I was wondering if you get real information about
6 how the patient's summary report is going to work with that? How are you deciding
7 what's going into that?

8 MR. CUTSHAW: Drs. Van Kyan and Ellis provided us with the
9 format for that summary report, and basically we're providing that page. And what it
10 allows the lead physician to do is go in and basically fill in the blanks and then provide
11 their narratives where they are appropriate.

12 So we have a set format we're working to.

13 MS. COOK: I don't know if it's on the website or not. But let's get a
14 copy to you on what that looks like. We work closely with the physicians on our staff
15 and then with the physicians panels on what that might look like.

16 Do I think that that will be the final version? No. I think we're going to
17 probably get some improvements to that as we get through the first few panels. But we
18 do have a set format.

19 MS. MUELLER: Yes. We'd probably like to look at that.

20 MR. ELISBURG: Do I also understand that you are generating some
21 kind of an operations manual or a claims processing manual so that people will be able
22 to utilize this system?

23 MR. CUTSHAW: Yes. We have a training manual. We have trained
24 all of the resource center personnel and all of the personnel here at L'Enfant center.
25 We completed that last week.

26 As a matter of fact, we continue training through Saturday.

27 In addition to that, we have set operational procedures.

1 MR. ELISBURG: Is that what's called the claims processing manual
2 we were told was under development?

3 VOICE: No. He's describing the case manual for the technical
4 computer case management is what he's describing. And that's what we've completed
5 the training with at the resource centers.

6 MS. SPIELER: Other questions?

7 MR. SHOR: Is there intended to be any sort of online application
8 process --

9 MR. CUTSHAW: They do go through the resource centers. Now of
10 course, people can phone in and request a paper application. Basically anybody can
11 apply through a number of venues. What we're doing is eventually, as that data is
12 received, it will be put into the CMS electronically regardless of the format in which we
13 receive it.

14 One of the things that we're anxious to do is get electronic signature
15 protocols established at the resource centers so that the full application with electronic
16 signature can then be done right then and there. A button can be hit and it's on its way.

17 MS. COOK: People still can call our 800 number. They can call up
18 forms, print them up and fill them out and go through our center here, too.

19 MR. CUTSHAW: We have phone-ins, mail-ins, a number of different
20 venues.

21 VOICE: We're hoping to have a claims tracking system with DOL.
22 We're working with them on that.

23 MR. CUTSHAW: Currently there's an information exchange group
24 that is meeting, and they're discussing how we might join these systems. There's
25 certainly efficiencies to be had in tying in DOL and NIOSH to a common case
26 management status and tracking system.

27 Again, we're speaking of a vision because we're talking about making

1 some pretty hard decisions across two federal agencies, and you all know what's
2 involved in vetting that sort of thing. But once we reach that point, regardless of what
3 side of the EEOICPA program an application is received in it would then go into the
4 common database.

5 That would allow us to know instantaneously that if we get a file we
6 could then go in and search and see that there was also a DOL case filed, which would
7 let us know that there's certainly some shortcuts and efficiencies to gathering
8 information there, as far as their employment data, their work history and even up to
9 and including facility information and rad exposures.

10 MS. COOK: And it's very important for us to do that. The President
11 has five management initiatives that all of the federal agencies are working toward, and
12 one of them is e-government. And to make this work, not only helps this program
13 specifically but really helps all three agencies really show that we're moving forward
14 with the President's management initiative and the e-government realm.

15 So this is one where I've been able to convince these guys that we have
16 support all the way to the top, because as it was put to me, there's only one thing that
17 the Secretary of Energy is going to have a discussion with the President on is
18 performance over the last year, and that is the President's management initiative, of
19 which e-government is one of them. So I know that's true for the Secretaries of the
20 other agencies, too.

21 MR. CUTSHAW: And that work is past simple discussion. We've
22 already provided what are called data maps to the other agencies so that they'll know
23 how we're forming our data and our meta-data so that they're now substantive
24 discussions as far as our data looks like this, yours looks like this; how do we bridge it.

25 MR. SHOR: Once the cases go to the physicians panels and are going
26 to go on to the states if they get a positive determination, will that information be able to
27 be shared with the state electronically as well?

1 MR. CUTSHAW: At the current time it will go on paper. As far as
2 electronic media, that has not been decided yet.

3 MS. COOK: I think that at a minimum we can give them a disk.

4 MR. SHOR: With all the case files?

5 MS. COOK: Yes. We may just do that anyway, whether they throw
6 the disk away or what.

7 MR. CUTSHAW: It costs two cents to make the disk.

8 MS. COOK: But we would like to encourage the states to be able to
9 do that so we aren't handling huge packages of paper. But state to state, they will be
10 different, depending on how computer literate their organization is.

11 MR. BURTON: Well, a related question to this might be, if a worker
12 has access to this file, you'll provide a copy to him?

13 MR. CUTSHAW: Yes.

14 MR. BURTON: Or attorneys as well?

15 MR. CUTSHAW: Well, once we provide a paper file to the worker,
16 what they do with it is entirely up to them.

17 MR. SHOR: But will you be providing an electronic copy of the file to
18 the worker as well?

19 MR. CUTSHAW: We certainly could provide them a disk of what's in
20 their paper file. Yes.

21 MS. SPIELER: I think part of the question -- or maybe I'm misstating
22 it, but it's very likely that the worker's attorneys will turn around and ask us for a copy
23 of the file, even though the worker has already. Just so you know.

24 MR. CUTSHAW: They may well.

25 MS. SPIELER: And there's some growing suspicion that many of these
26 people will be turning to attorneys.

27 MR. CUTSHAW: Well, that's a policy issue that will have to be

1 vetted.

2 MS. COOK: We'll certainly give the worker their file in whatever
3 format they find useful, whether it's electronic or a hard copy. And how they want to
4 give it to their attorneys is up to them.

5 MS. SPIELER: The reason I said, you're assuming the worker turns it
6 over to the attorney. In a lot of compensation programs, of which I know this isn't one,
7 but in a lot of compensation programs the attorney turns to the agency and asks for a
8 copy of the file. And you can anticipate that that will occur in this situation.

9 And so it might be something you want to think through in advance.
10 When you get that request, you're going to have to make some decision. And if you
11 sent paper copies to the individual workers, it's likely that the attorney will know -- I
12 don't know what the right answer is. All I'm saying --

13 MS. COOK: For me the right answer is that someone says this person
14 represents me and I would like them to have a copy of my full file. We can give them
15 an electronic file in two minutes, as long as the worker has told us in writing that that is
16 acceptable.

17 I have had a lot of conversations with workers who are concerned
18 about privacy. I'll tell you that.

19 MS. SPIELER: I wasn't suggesting that a file would be turned over
20 without direct authorization.

21 MS. COOK: And I know that. It's just -- that's one of the
22 conversations that Rick and I have had is that whole privacy issue around some of this
23 stuff. There are workers who are still actively working who are concerned about the
24 information about their health being available to the world.

25 MR. CUTSHAW: And that's why we have this tied down so tightly to
26 specific roles, to specific computers, to specific points in time.

27 MS. SPIELER: Other questions?

1 (No response.)

2 MR. CUTSHAW: Thank you all.

3 MS. SPIELER: Thank you.

4 It might be useful if you can stay around because I think there may be
5 issues that come up in the course of our discussion over the next hour or two that it
6 might be useful to be able to ask you something, if you don't mind.

7 MR. CUTSHAW: Certainly.

8 MS. SPIELER: The rest of today's agenda was essentially organized
9 around discussions broken down by what were our original subcommittees or
10 subpanels. However, I believe with the exception of the claims processing
11 subcommittee that had a conference call, I'm not sure that any of the subcommittees
12 have met since our last meeting.

13 Unless I hear otherwise from the committee members, my inclination
14 would be to go through these -- perhaps starting with claims submission processing.
15 Let me suggest starting with the sort of procedural issues, claims submission processing,
16 post-medical review panel issues, and then working forward from there.

17 But rather than re-living previous conversations, I would suggest that
18 the subcommittee chair bring us up to the date to the extent that that makes sense and
19 raise any issues that you think merit full committee discussion. And then if there are
20 other committee members who have issues that fall under that category, that they could
21 be raised at that time.

22 Does that make sense?

23 So, why don't we start with claims submission and processing.

24 Don and Vicky, I'll turn this over to you.

25 MR. ELISBURG: Well, I think everybody was sent a copy of our
26 report. I e-mailed everybody a copy. There's more to hand out if someone requests it.

27 We had an extensive discussion with Jeff Tate and Jeff Silverman on

1 October 4th going over a whole list of items, almost all of which were covered by either
2 Secretary Cook or Kate or Rick or somebody in the last several hours in terms of
3 things like medical evidence, like the statute of limitations, like the dose reconstruction
4 issues and no payors and toxic substances and the MOUs and the beryllium claims.

5 Looks like we've had three hours of our subcommittee meeting here.

6 I think there are only a couple of items that are still hanging out there.

7 We did ask about the -- which is why I asked Rick about it -- the
8 claims processing system in terms of the claims examiners or the equivalent of claims
9 examiners who are going to be making decisions along the way and what are their
10 instructions and how is this process going to work. Which is kind of where we were
11 back in June when we met with the people over -- someplace in this building or the next
12 building over, and where we continue to be.

13 At least as of October 4th what we were told was it's still under review.
14 It's not ready for the committee to be reviewed.

15 I thought I heard from Bev Cook today that as that process moves
16 along we will in due course get it for our input and thoughtful suggestions to the
17 Department of Energy. So I'm grateful for that and I think that that responded to one
18 of the issues.

19 We have some open questions about the Department of Energy, the
20 Department of Labor and information sharing. I think we had pretty good feedback
21 from both sides today on how that's working.

22 So I'm not sure there are any open items to cover from where we were
23 on our subcommittee report other than it's very clear there's a lot of stuff going on and I
24 think we as the subcommittee members on the conference call got a lot of information
25 but we still didn't feel we quite had our arms around this whole process.

26 I think until we get a picture of how these claims are moving,
27 particularly with I'll call the claims manual, but what in fact is the claims procedures and

1 systems that we can see as to how this process is actually going to work, I think we will
2 still be a little bit uneasy about where this is all going.

3 MS. HATFIELD: I didn't have anything to add, Don. I thought you
4 did an exceptional job of explaining where we were. So I don't really have anything to
5 add at this point.

6 MR. ELLENBERGER: It's good with me.

7 Jeannie, are you still with us?

8 MS. CISCO: Yes, I'm here. You've covered it pretty well.

9 MS. SPIELER: Bev, is there -- and Keith, is there any way that the
10 members of this subcommittee can be useful to you in the form of providing advice over
11 the next couple of months as you get the web system up and running?

12 MS. COOK: Yes. As I said this morning, the procedures that you're
13 talking about, we're in the last of our own internal food fight over those. So we're
14 hoping to give you our best product here within the next few weeks so that then you
15 can take a look at them, too.

16 I do suspect though, because of the complicated nature of what we're
17 doing, and a lot of what we talked about so far today, this certainly won't be our last
18 shot at them. I think we will continually update those procedures based on where we
19 end up with barriers and how things really work in the long term. But I do want to give
20 you a shot at our procedures here very shortly.

21 MS. SPIELER: Any questions? Concerns? Expansion on this issue?

22 (No response.)

23 Kind of taking this in the way a claim progresses through the system,
24 presumably once a claim has been put together it gets sent to the medical panels for
25 review. Are there any open issues, Steve, in the medical panel subcommittee or any
26 issues at all? I know that you haven't met since the last meeting to discuss, but
27 concerns the committee should address?

1 MR. MARKOWITZ: We haven't met. (Off mike.)

2 I'm not sure what you're thinking about but you might consider some
3 sort of exercise where you take some sample of cases and send them around to all the
4 panels. Not the judgment on a particular case but to try to look at how much
5 consistency you're getting.

6 I think there would probably be a lot of inconsistency and it would be
7 worrisome.

8 MS. COOK: That is a conversation that I had with the organization that
9 I'm going to be speaking to on Friday, actually, with the head of that organization; this
10 National Group of Occupational Medicine Physicians. Because if this goes well, it
11 speaks well for that body of people. And if it goes badly, it could badly affect the
12 reputation of the OC MED doctors in this country.

13 There's a lot of people involved in this and so they have a vested
14 interest in making sure this goes well. So that is one of the things that I do want to talk
15 to them about Friday; suggestions on their part about how we do the quality check on
16 what the physicians panels do.

17 It affects their profession, to be blunt, and I hope they have some ideas.
18 And they are thinking about that. Their leadership is thinking about how they might
19 affect that quality review. Maybe that organization is a part of that quality review.

20 MS. MUELLER: (Off mike.) What's in that summary report is vital
21 and we need to look at that.

22 MS. COOK: And that gets into -- we want to serve the purpose of this
23 law, which is to assist people getting state worker's comp and to get them a decision on
24 causation.

25 I don't want to divert resources beyond what I have been provided
26 funding to do in how do we utilize the information for the bigger picture.

27 Having said that, there is a lot of R&D work that is within my control

1 on looking at health of workers, health and safety of the DOE complex. And how I can
2 leverage different parts of my program to fully utilize the information here is something
3 else.

4 It may not be a part of this EEOICPA program but it may be something
5 else that we do in the Department that furthers our understanding of occupational health
6 and safety.

7 There's a great database here, though. Somehow I'm going to mine
8 this database. I just haven't figured out how yet.

9 MS. SPIELER: Okay. So the claim goes to the physicians panels and
10 ultimately the physicians panel issues a decision. And then I think the question where
11 we got stuck at our last committee meeting, and perhaps one worth discussing at
12 greater length today is the "then what" question.

13 John, we forced you at the last meeting to accept the role of chair of the
14 subcommittee that was then never fully formed. I know that. I wonder, however, if
15 you would lead this part of the discussion.

16 MR. BURTON: I got my revenge because you conscripted me and I
17 haven't done anything.

18 MS. SPIELER: That's always the danger of conscription.

19 MR. BURTON: I apologize for that.

20 Let me just kind of go back over the history of this, just reading from
21 the note you sent out shortly after the last meeting.

22 MS. SPIELER: I'm going to step out for one second but just keep
23 talking.

24 MR. BURTON: In your memo of the 20th, you said we want to look at
25 the general problem of what happens to the claims after a finding of causation has been
26 provided by the physician panel. Included in this will be mechanisms and approach to
27 determining the PPD ratings, the benefits amounts under applicable state laws. Same

1 for medical treatment, other procedural issues and how assistance might be given to
2 claimants in the process.

3 So that was kind of the general scope of that committee's assignment.

4 In that memo, Emily -- which was sent to all the members of this WAC,
5 she asked for people to let me know if they were interested in serving on that
6 committee. And Les Boden responded.

7 MR. BODEN: No, I didn't.

8 (Laughter.)

9 MR. BURTON: And I also, based on discussions with Emily, invited
10 Peter Barth to join us because of his expertise on permanent partial. And he agreed to
11 serve.

12 So we have a committee. And then I'll have to say the committee has
13 not done anything and I will accept responsibility for that.

14 And I think the question is now where do we go.

15 Here's what I proposed in a memo I sent to Emily the other day.

16 Here's what I proposed. John Burton pleads guilty to dereliction of
17 duty.

18 Then we need to decide whether, one, it still makes sense for the ad
19 hoc subcommittee to be established. Two. If so, who should be the chair. I'm willing
20 to turn this assignment over to somebody else, especially since I'm involved in getting
21 this other committee's meeting ready on December 13th; who else wants to be on this
22 subcommittee and what's the agenda and time table for the committee.

23 So I guess that really kind of lays it out in a very general sense.

24 I think there's been a lot of things we've talked about today that get to
25 some of these crucial issues for this subcommittee. I guess the other thing that needs to
26 be said, as we've recognized from the beginning, this subcommittee would overlap
27 potentially with a lot of the other subcommittees so there's a fair amount of coordination

1 that will have to be done, including the other committee that I'm going to talk about in a
2 few moments, the contractors/insurers cooperation subcommittee.

3 Certainly that's some of the issues of what happens after we have a
4 physician panel determination. It kind of gets into what we expect the contractors and
5 so on to do.

6 But some of the other issues we talked about today: what kind of
7 assistance will we provide. It's clear that the assistance after the office decides it's
8 going to go ahead and send the case to the state, we're not anticipating providing much
9 assistance to individual claimants at that point. And I think that's an issue.

10 It may be something that you're statutorily constrained to, but there's
11 certainly -- if that's the case, there's certainly a number of issues that need to be gone
12 through in terms of how we're going to get these benefit streams paid; whether there's
13 some role for perhaps a third party administrator to help us expedite this process;
14 whether they're going to throw these things straight into the state agencies and ask them
15 to resolve permanent partial questions or how it proceeds.

16 It's not at all evident to me how that ought to go and I think obviously
17 we haven't gotten to that point yet. I suspect fairly quickly as you begin to send some
18 of these cases forward that these are the issues that will emerge.

19 So I think there's some role for this committee. It's a little bit hard for
20 me to anticipate exactly what the committee would be doing.

21 So that's kind of my quick report. The question is how do we
22 proceed.

23 MS. SPIELER: It's a little difficult to know how to proceed given this
24 committee's charter expires at the end of December or the first of January, and we
25 don't really know whether we will convene again.

26 Given that, and given the importance of this issue, I'm somewhat
27 inclined to spend a few minutes now talking about these issues, as we have not

1 previously really fully explored them and we as a committee have never been asked for
2 or made any recommendations with regard to some of the concerns.

3 And to the extent I think that there are people around this table who
4 have an incredible amount of expertise in state comp programs. It might make a great
5 deal of sense for us to offer some of that in the form, if there's agreement, of formal
6 recommendations as part of the discussion today.

7 To the extent that that's not possible, it seems that we might want to set
8 up a subcommittee with the understanding that going forward with it may be difficult
9 given that we don't really know. If the committee is reappointed, then obviously we
10 would go forward. But I know, because Len and I were talking about this, that Kaiser
11 Hill has raised some concerns about how this would function.

12 And you might actually, Len, if you're willing, it would be useful if you
13 would share with the full committee the issues that you kind of have been struggling with
14 in terms of the Colorado system so that people can get a sense about the sort of
15 pragmatic issues that face a contractor who is in the willing payor position.

16 Again, I tend to think of this as a two-road highway. Or one of them
17 might be a highway and one of them might be a mule track. But the sort of situation
18 where we think there's someone who's willing to pay this fund that isn't going to
19 contest either on causation or on technical bases, which would be the Kaiser Hill
20 situation. And then the situations in which that's not true.

21 MR. MARTINEZ: Somehow I knew this was going to end up in my
22 lap.

23 We are in the throes -- and I'm sure Mark is in the same position in
24 Idaho. We are in the throes right now of implementing obviously the Act and the claims
25 that are being processed. We have yet to receive our first worker comp claim yet. It
26 hasn't come yet but we know it will come shortly.

27 I think we have something like 1200 requests for employment

1 verification, which is the first step, and then something like 400 plus requests for
2 medical records which have been provided, which says at least 400 are in the pipeline
3 ready to go to the physicians panels, which would be the next step that would occur.

4 We've wrestled with this problem. It is a problem that we sat down
5 with our contracting offices on the Department of Energy side and the field office
6 manager. And Bev was kind enough to come out and spend a couple of days out at
7 Rocky Flats, first with a group of former workers and then some time with us.

8 And we looked at the goal, which was to implement the Act, and how
9 that would affect us. Then, what would we have to do so that we literally could get
10 ourselves out of the way so that the injured worker will receive whatever benefit was
11 due the worker.

12 We proposed, after much discussion with the Department and also a
13 meeting with our insurance carriers -- I might explain we have a little bit of a
14 complication at Rocky Flats. There have been four site prime contractors; actually five
15 site prime contractors. One ended up being, when we took over in '95, one of our
16 subcontractors. But they at one point in time were prime also.

17 So there's been five different prime contractors and there's been
18 something like six different insurance companies involved over the years and two
19 different kinds of retrospective insurance policies, and our insurance program, which is
20 a true insurance program, which is a true insurance programs, which started in 1995.

21 So we have I think most of the variations we could possibly have at
22 Rocky Flats. And what we did was -- you heard me at a couple of previous meetings
23 say why don't we just hire a third party administrator, do it all in one place; process all
24 the claims through that one third party administrator; implement those claims in
25 accordance with whatever the state requirements are for the specific states that are
26 involved.

27 And we kind of took that on as a mini-program at Rocky Flats, given

1 the fact that we had so many insurance carriers and contractors involved.

2 And we have talked to the insurance industry in Colorado at least and
3 they are willing in fact to write a contract with us as a third party administrator. And by
4 the way, in the state of Colorado, and probably in many states -- and the state comp
5 folks know this -- the state comp law changes. So depending on when your injury
6 occurred, you may be under a different benefit structure than today's benefit structure.

7 And this particular carrier, who actually happens to be the state fund as
8 well, Pinnacle, is willing to take this one as a separate contract, because we have our
9 own insurance policy. Take it on as a separate contract where they would just be the
10 processor of the claim as a third party administrator, and the cost would not be like
11 most retrospective insurance policies, which are a percentage of the value of the claim.
12 It will be a flat rate yet to be negotiated per claim to process the claim.

13 There are several things that have to happen, like waiving of the statute
14 of limitations and any other contesting issues that have to normally take place.

15 When Bev was there, we had a discussion about what is contesting and
16 what is not contesting because the direction from the Department of Energy to the
17 contractors is you are not to contest a claim. And if you do, any cost associated with
18 you contesting the claim is an unallowable cost under your contract.

19 In the state of Colorado, the only way you can get an extension to the
20 15-day turn around time that you have to respond is by contesting, so we had to sort of
21 work our way through what that meant with the Department of Energy so there was a
22 clear understanding.

23 We put together a flow diagram, reviewed that with our contracting
24 officer, on how we thought this could work, and presented that to the Department for
25 their consideration, which is under the Department's consideration right now as to
26 whether or not they would adopt our plan. It requires a contractual change because of
27 the nature of our contract. Which, as Bev has said, you have to look at each site to see

1 what the contract looks like and determine how you fix the contract claim so that that
2 works.

3 And trust me, that's not hard. If the two parties want to do it, it's easily
4 done.

5 And so that's kind of where we're at. We think it's a workable
6 solution.

7 It is perfect? No. Will we have to modify it as we get into it? I'm
8 sure. Because we haven't thought of everything and something will pop up in our face
9 and we'll have to deal with it. But for the most part, what we're trying to do is get in
10 alignment with the Department.

11 We have a willing party that's willing to process claims like a third party
12 administrator and do it on a per claim cost basis, which is the most economical
13 approach and the least administrative burden, and solve the problem.

14 MS. COOK: I don't think you could make it sound more complicated
15 with a good answer at the end.

16 MS. WELCH: Is that third party administrator going to then figure out
17 which one of the multiple insurance involved --

18 MR. MARTINEZ: No, no. Good question. Good question, Laura.

19 I mean, the way we've gone about this is -- what we're saying to the
20 Department is we have a contract with the carriers that we've had as our carrier, and
21 we can direct them, since they're our carrier, that you're not going to get involved in
22 these claims should there be any that fall in your time period. This third party
23 administrator is going to do it. You don't contest. We're not even going to send them
24 to you. You have to agree to assign that responsibility to this TPA.

25 What we've asked DOE to do is for those prior contractors, because
26 we don't hold the contract with the prior contractors, to instruct the prior contractors
27 who have the retros or whatever insurance program they had with their carrier, to tell

1 their carrier that this TPA will handle them. You're not in it. You're out of it. Et
2 cetera, et cetera.

3 So we basically took them out of it so they don't get to play.

4 MS. WELCH: Have you figured out then when it's a TPA and a state
5 decide which person is to be paid if wasn't one of your insurance carriers how that's
6 going to happen?

7 MR. MARTINEZ: Yes. The TPA is going to pay it. They're going to
8 bill us. We're going to bill DOE. We're done.

9 MS. WELCH: So anybody who ever worked, even if they didn't get
10 injured under your insurance, that's still processed through this way?

11 MR. MARTINEZ: Yes.

12 MS. WELCH: That's great.

13 MS. COOK: And that's what I said. There's some unique and
14 innovative things going on and I think that this model at Rocky is going to be applicable
15 to others. But at some sites, we've had one contractor the whole time and that works
16 there. It's a variety.

17 MR. MARTINEZ: You don't need that. You need to just carve off
18 these claims as a different part of that insurance program and have them pay the claims.
19 And I negotiate on a claims paid basis, not on a percentage. And just cut it out and
20 make it a separate deal and handle it that way with WAUSAU or whoever.

21 KATE: Question AA of the preamble discusses what DOE's opinion
22 about the effects of a positive finding are. Then of course everything lunges to what
23 would absolutely work and subsumed by what control we have within the law.

24 It also discusses what our roles of responsibility might be for lessors,
25 for entities that have private insurance, which is a species Rocky could be given where
26 the snapshot is. And where this spun off from first was how to deal with permanent
27 partial disability, which that still doesn't address, and whether that's considered

1 contesting or not contesting.

2 And I urge you to read question AA in the preamble, which is DOE's
3 response to what are we going to do about permanency determinations and whether the
4 employer participating in such a determination is contesting a claim or participating
5 legitimately.

6 MR. MARTINEZ: We covered that in our proposal.

7 KATE: I've not seen that, but that's great.

8 MS. SPIELER: How would you handle the permanent with the TPA?

9 MR. MARTINEZ: We now have a contract with our insurance carrier
10 that requires us to provide them with certain information for a determination to be
11 made. That is not contesting. All we're doing is providing information to the
12 contractor.

13 So we provide information. And what we're saying is if it is for a claim
14 under EEOICPA, then the determination needs to be made under the state guidelines of
15 whether it's permanent partial or not. And whatever that determination is is paid.

16 If the claimant doesn't like the answer and they want to contest, they
17 still have the right to do that. And then it runs through the process. And if they do
18 contest, then everything after the contesting of us having to provide information, testify
19 or whatever, is reimbursable and allowable under our contract. It's not contesting.
20 We're still just providing information.

21 MR. BURTON: Let me make sure I understand.

22 So your TPA says this is a 40 percent permanent partial disability. The
23 worker has a lawyer who asserts that a 50 percent rating is appropriate. What
24 happens now? The agency gets involved in resolving that dispute?

25 MR. MARTINEZ: Yes. Under the normal worker comp process in the
26 state of Colorado.

27 MR. BURTON: And DOE has taken the attitude that you're arguing

1 that it's truly 30 percent as opposed to 50 percent is not contesting the claim; and
2 therefore, will reimburse your expenses for that?

3 MR. MARTINEZ: That's the position we're taking because we have a
4 responsibility to prevent waste, fraud and abuse.

5 MR. BURTON: Okay. And is this DOE's --

6 MS. COOK: Well, it hasn't made it up to us yet. And I'm sure this is
7 the kind of stuff the field office is looking at. And that's a really good question.

8 And Len's exactly right. We're all taxpayers here. We're not rolling to
9 everything. We're doing what makes sense. So there's got to be some
10 framework around this but I don't know how we do that.

11 MR. MARTINEZ: Right now we aren't doing anything in this area
12 because we don't have contracting officer direction.

13 MS. SPIELER: Can I just ask a quick question that maybe you could
14 answer.

15 In Colorado, an employer's TPA says 30 percent and the claimant's
16 treating physician says 50 percent and it goes to litigation. What happens? Does the
17 state agency have an IME done? And if so, is it necessary for the employer to really
18 litigate the issue in order to prevent fraud and abuse?

19 MS. MUELLER: So what happens in Colorado is the only way you
20 can appeal the TPA rating is for the claimant to pay for an IME from the Department.
21 And then that has to be overcome by clear and convincing evidence.

22 So again, theoretically the employer could just accept the IME done by
23 the division because that has the biggest weight of evidence anyway and just pay it and
24 not contest it. And then, of course, the employee could still contest it. The claimant
25 could still contest it if they wanted.

26 So there's another level in Colorado that's sort of odd where you have
27 this sort of -- supposedly the intent, of course, was for that to be the final decision.

1 MS. SPIELER: And your IME has been challenged under the new
2 statute?

3 MS. MUELLER: No.

4 MS. SPIELER: Isn't it under a legal challenge of some persuasion?

5 MS. MUELLER: No. Unless there's some aspect of it that I'm not
6 thinking about that's under challenge. But no, that's statute's been there since '91 and
7 we haven't had any -- but they get overturned. I'm not saying they don't. Clear and
8 convincing evidence is clear and convincing evidence. They get overturned.

9 MS. SPIELER: So there are a variety of ways you can cut it at that
10 point in terms of how you deal with the IME and at what point you allow the TPA to go
11 out and get them to do something.

12 MR. MARTINEZ: Yes. For instance, if the TPA said 30 percent and
13 the IME came back and said no, it's 40 percent, we'd go -- okay. 40 percent.

14 MS. SPIELER: Yes.

15 MR. MARTINEZ: It's not contesting. We're just like taking what's --

16 MS. SPIELER: Again, I urge people to read AA. That has a very
17 important perspective from the contractor and DOE's perspective on what contesting is
18 or isn't for permanency.

19 MR. ELISBURG: Excuse me. I have I guess an observation about
20 this.

21 I think what you've described, Len, is a really very promising and made
22 an awful lot of sense. I'm a little concerned about what I hear about how this is
23 working through the system because I'm not sure what the people in the field office are
24 doing interpreting what this statute means vis-a-vis the Department of Energy in terms
25 of working out a deal with you. And I'm surprised that it's not being worked
26 somewhat from the top down, particularly with all the other nuances that Kate's raised.

27 MR. MARTINEZ: Well, first off, the Department of Energy at Rocky

1 Flats is not working with us on it right now. We've had several discussions, some of
2 which Bev was involved in.

3 We put the proposal together and submitted it to our contracting officer
4 which is at the field office, and I am very confident that because they make a decision,
5 they're going to review it and make a recommendation to headquarters, which
6 headquarters will have to review before we get any direction.

7 MR. ELISBURG: I'm only concerned that we not suddenly have 15
8 different flowers blooming around the country and all of a sudden we've got 15
9 different interpretations of where you can go with this statute or not, given the
10 complexities already of where we're going with the statute.

11 MS. COOK: I understand. It's going to be a complex answer
12 depending on which site. There's going to be 15 different flowers. And Len heard me
13 say this to our field offices and everyone involved. The Secretary made it very clear to
14 me that he wants this to work. And anyone coming after him about the Department not
15 making it work, we're all going out together, including the people at the field office.

16 So what they're doing though I suspect, and I don't know that I've
17 seen that proposal yet. What they're doing though is seeing how this works with the
18 contractor they have in place there, the people that know their contract best. I do not.

19 So they have to figure out how this goes to the contractor and what's
20 put in the contract and all that sort of thing.

21 MR. ELISBURG: I understand each contract would obviously be
22 different but I'm more concerned that we not get into a question of interpreting statute
23 this way at Rocky Flats and interpreting it someplace else.

24 MS. COOK: The direction they have all gotten from their program
25 offices is that you have to figure out the way to pay people. What's the chain to pay
26 people.

27 The first round when I talked to folks, what I got back was, oh, this

1 might be expensive. And I said, no, no. Let me make sure you understand. That's off
2 the table. That's not to be discussed. What's to be discussed is what is the mechanism
3 available to you at your site with the contacts that you have to get people paid. And
4 that route is different depending on which site you're at.

5 While I've interrupted, the other thing, the political reality of this is that
6 although we may get states kind of waffling about what does this mean to us in the long-
7 term -- and Kate and I both have had conversations with state groups, like for instance,
8 the site where I'm going to go to and I'm going to talk to workers and the staff. Their
9 elected officials, their senators and congressmen are sitting there in the audience, too.
10 And the last thing that state wants is for any of us to say, well, we can't get the state to
11 play ball with us, whether it's the state of Colorado or anybody else.

12 They understand how important this is to their senators and
13 congressmen. They put this in place. They know it's complicated. They want it to
14 work. And the states have been very receptive when we say, look, the elected officials
15 in your state need to talk together because we want to make it work, not find ways to
16 make it not work.

17 So we haven't had to pull that card often but when we do, it works.

18 MR. BODEN: I have a question, Len, on what you described. It
19 sounds like -- you said you have one policy which is a true insurance policy not a
20 retrospective policy.

21 MR. MARTINEZ: We actually have three of those.

22 MR. BODEN: Since '95 you've had true insurance. If somebody
23 came into the subpart D program who appeared to be covered under your true
24 insurance policy, would they also go to the TPA?

25 MR. MARTINEZ: We actually would carve that claim outside of the
26 insurance program because it was not part -- EEOICPA was not part of the insurance
27 programs that we put in place at the time we put them in place.

1 So in other words, the EEOICPA type claim is not covered under our
2 current insurance program and we wouldn't put it under our insurance program.

3 MR. BODEN: And where would it go?

4 MR. MARTINEZ: It would go under the TPA.

5 MR. BODEN: It would also go. So, this in a way is also a response to
6 the willing payor.

7 I just wanted to clarify that for myself. So that if this was a model, for
8 example, and it was applied to another current contractor who either that contractor or
9 a previous contractor for who they were responsible had a true insurance contract, then
10 in principle this kind of arrangement could work for that as well.

11 MR. MARTINEZ: I'm glad you raised that. It was a point I was going
12 to raise.

13 The approach that we took applies not only to the prime contractor
14 employees but all the subcontractor employees who worked for us or worked for the
15 previous contractor.

16 So if they're qualified under EEOICPA, irrespective of whether they
17 were a prime contractor employee or a subcontractor employee, they would come
18 under this program. It would be handled in that way.

19 MR. BODEN: So this is a response to one of the things that we've all
20 been struggling with. And I like the clarity of your answer in a way, which was the
21 contracts that we've had since '95 or other people might have had earlier simply did
22 not apply to this set of claims since it was not envisioned that these claims would go
23 forward. And the terms of the contract, including the payment of the premium, were
24 not set under these conditions.

25 Interesting.

26 MR. MARTINEZ: With our carrier in the room when we were having
27 this discussion, they were nervous until we talked about what a possible solution would

1 be, like writing a different policy or a different program. There was a huge sigh of relief
2 since they own everything over the cap.

3 KATE: Are they able to subrogate?

4 MS. SPIELER: Who's they?

5 KATE: If a TPA's going to take responsibility for claims that there
6 could otherwise be defenses raised.

7 MR. MARTINEZ: They're just paying claims.

8 MR. BODEN: And they make money on every claim they pay.

9 MS. COOK: But it's not a percentage.

10 MR. MARTINEZ: They get paid by the claims, a per claim process
11 cost.

12 MS. SPIELER: And then you pay it.

13 MR. MARTINEZ: And they tell us what the claim value is. And we set
14 up an escrow account and they pay the claims out of the escrow account. When the
15 escrow is getting low that we draw down, we do an audit of their claims just like any
16 other insurance program. Just like the self-insured program.

17 MS. SPIELER: So essentially, this is exactly what you had previous
18 proposed and we had written up as a suggestion with regard to the --

19 MR. MARTINEZ: Across the complex.

20 MS. SPIELER: -- across the complex. Right. You're essentially
21 setting it up for Rocky Flats.

22 MR. BURTON: Let me follow up on that. You're the high road that's
23 just been described. To what extent can this model be used for the low road. That is,
24 what's the worst case scenario in terms of sites where there's no current contractor,
25 there's nobody. The company's gone out of business 10 years ago, et cetera.

26 MR. MARTINEZ: Well the vision that I would have, and I could be
27 simplistic as I tend to do things simplistically first and then find out how complicated

1 they are after, is that if you don't have a willing payor and you have a group of
2 companies, for instance make the scenario that there is no longer a site, a DOE site.
3 Therefore, there's no prime contractor for DOE and there's a bunch of subcontractors
4 now and there's a former prime contractor employee and there's no successor
5 contractor. Then the Department for that particular instance could write a contract with
6 a TPA and the TPA could process all the claims for a fee on a per claim basis -- hint,
7 hint, DOE; per claim basis.

8 Just process the claims and DOE would fund them as prime contractor.
9 And they could handle it out of a regional office versus headquarters, for instance.

10 MS. COOK: And in some of those situations we actually have retro
11 policies that the Department holds for those sites already in place.

12 MS. WELCH: So the Department is essentially an insurer of the
13 facility?

14 MR. MARTINEZ: The Department is never an insurer. Trust me.

15 MS. COOK: No, no. We have a policy. We have a retro policy for
16 some of those sites that are totally closed or out of business altogether. We have a
17 retro policy for some of those.

18 The interesting aspect of this is the whole percentage versus per claim.
19 There could be a huge cost difference.

20 MR. MARTINEZ: It is a huge cost difference.

21 MS. SPIELER: Are you suggesting the retro policy would cover the
22 subtitle D claims or would you expand the policy to cover the new set of claims?

23 MR. MARTINEZ: It depends on how it's written. If it's written as a
24 retro policy that's just processing claims, the answer to that is yes. You just call them
25 up and say I'm sending you a letter to amend the contract to include this scope of
26 work. Here it is. Blah, blah, blah.

27 MR. SHOR: Only if it's on a percentage basis you may not want to do

1 that.

2 MR. MARTINEZ: Right. You may want a separate contract so it's on
3 a per claim basis.

4 MS. POST: I have a question going back to what Kate was talking
5 about. It seems to me that when you say that they did not apply, that the insurance
6 carriers didn't ever take on these risks for these types of claims, could there be a class
7 of claims that would have been anticipated that now you're having DOE pick up
8 ultimately where there really is true insurance that should have been paying for these
9 claims or should be paid for these claims.

10 KATE: That was my subro question.

11 MS. POST: So really it seems to me, it's at least somewhat in the
12 interest of DOE to at least be satisfied that there isn't also -- even though there is
13 maybe a slightly unwilling payor out there, that unwilling payor, at least enough is there
14 that those people should be picking up those claims anyway.

15 MR. OLSEN: Well, that's the conversation.

16 MS. POST: And that probably goes more to the people who are still
17 working at those facilities that have claims than the retired workers who are making the
18 claims for cancer.

19 MR. OLSEN: The conversation Kate and I had at the break,
20 particularly in Idaho where there is a subcontracting community that is pretty well
21 established and still around, and as part of their firm fixed price proposals, DOE
22 ultimately -- ultimately DOE has already paid for that insurance. And the carriers are
23 still around. The subcontractor employers are still around.

24 Would it be an option for DOE to first send those people to the carrier
25 employers, see if they would be paid. And if not, then it could be run through the
26 system.

27 MS. SPIELER: You would end up having to litigate. They wouldn't be

1 entitled to raise the defenses to the claim in the state system and they wouldn't be
2 willing payors unless they could raise those defenses.

3 So the only way you could really do this, unless you were planning to
4 get a state to allow two rounds of litigation per claim, which I don't think any state is
5 willing or able to do under either the rule or the memoranda of agreement. The only
6 way you can do it really is if DOE separately after the claimant is paid turns to the
7 carrier and says we think you have a responsibility here.

8 And the problem then is that they didn't get to raise their defenses for
9 the claim.

10 I mean, it's an endless cycle of problems if you try to claim -- if DOE
11 tries to make a subrogation claim against the carrier unless the carrier gets to function in
12 that claim exactly the way they would have on a normal claim.

13 And what you're suggesting is they can't do that.

14 MR. MARTINEZ: And I would submit to you that since this came into
15 effect in 2000, only if the policy was written after 2000, the effective date of this
16 particular Act, would the insurance carrier be, quote, liable, close quote, for including
17 this benefit or this act in their insurance program and should have.

18 If they did not, then you might have an argument.

19 MS. SPIELER: Technically they should have been paying on
20 occupational disease claims, but --

21 (Cross-talk.)

22 MS. COOK: One of the things we're doing is providing information
23 that people didn't have for their claims in the past. And I would think if we're just
24 doing it straight by the book, they'd have a better shot at it than they would have
25 before.

26 MR. MARTINEZ: You're also sending it to a physicians panel that's
27 making a determination that in fact it's compensable and it is a valid illness. There's a

1 whole different standard of acceptance.

2 MS. COOK: They're not deciding it's compensable. They're deciding
3 that their work made them sick.

4 MR. MARTINEZ: Right. They decided that they are injured.

5 MS. COOK: Yes.

6 MS. WELCH: I think you could add performance. At some point
7 someone could do an audit to say of these claims, these 300 claims that were paid in
8 the state, how many would have made it past this, this and this usual defense. And
9 when you find that it's less than one percent, then you don't sort of worry about it.

10 But if it turns out it's 25 percent could have gone through the other way
11 --

12 MR. MARTINEZ: Kathryn and I were talking about this earlier. If you
13 apply the statute of limitations in the state of Colorado, none of these would get
14 compensated.

15 MS. WELCH: That's the point. These would not have. So you're not
16 sort of -- DOE's not paying for it through their insurance program in one place and
17 directly through this new TPA because they would have been denied on that
18 universally.

19 MR. MARTINEZ: The Department can certainly direct the contractor
20 to process these claims in accordance with the state comp rules and in fact not waive
21 statute of limitations or any of the other defenses.

22 Now you're into contesting.

23 MR. BURTON: But I do think there are some interesting incentives
24 that are built in here because if you're an insurance carrier in Colorado who's got a
25 disease that occurred in early 2000 and it's still working its way through the system,
26 you've surely got a strong incentive to fight that claim even more than you would have
27 otherwise. Because if you win, it's going to end up back in the DOE's responsibility,

1 not the insurance carrier's.

2 MR. MARTINEZ: I don't think that would be an incentive for them to
3 fight any harder than they normally would.

4 MR. BURTON: Probably not.

5 MR. BODEN: Those of us who look at occupational disease know
6 that very, very few true toxic disease cases just sort of fly through the system without
7 defenses. And the DOE has experience in this area in terms of its own history. In fact,
8 it was that history that led to this Act.

9 I think at the margin, John, you're right that there would probably be
10 some claims that would have gotten paid. But if you look at the overall resource cost of
11 fighting a whole bunch of claims to get a tiny fraction of them paid through the state
12 system as compared to the other way now, I think you end up saying that, yes, there
13 might be a tiny windfall for some insurer but mostly that would be compensated for by
14 the other side of it.

15 MS. SPIELER: Given especially the position that DOE historically took
16 with regard to issues of causation, it seems highly improbable that these claims would
17 ever get paid, even leaving aside the technical and jurisdictional defenses that could be
18 raised.

19 MR. MARTINEZ: Right.

20 MS. SPIELER: Given that, I mean, I'd actually like to bring -- I think
21 this is interesting because it again suggests that despite this sort of sense of enormous
22 complexity of the program that in fact there are ways to create a sort of reasonably --
23 I'm not sure not problem free, but reasonably easy mechanism that will get claimants
24 benefits under the state compensation systems based on the findings of the physicians
25 panels, which I think has been the intent of the legislation and the intent of DOE.

26 And the question then becomes is this something that you're trying to
27 adapt to the other sides where there is a prime contractor or are you -- I gather that the

1 initiative here was taken by Kaiser Hill. Are you waiting for the other contractors to
2 come forward and propose something like this or exactly what is the way that your
3 office is functioning with regard to the payment of claims post medical panel review.

4 MS. COOK: Because this requires so many interfaces within the
5 Department, we follow the money chain, the different money chains within the
6 Department, and how we get appropriated money.

7 What we're doing from the top down is what I described this morning
8 about gathering up the information about all of the aspects of every contract we have in
9 place and how do we reach out and touch people and where it goes.

10 But in the meantime, we've made people -- and Len has the advantage
11 and disadvantage of being part of this organization. We've made some people more
12 uncomfortable than others, as does Mark. They're working it from the bottom up from
13 their company's perspective on how is the best way to do this.

14 We're coming together in the middle here very quickly, I believe. And
15 I think that in the next six weeks even what we'll finally find ourselves is in a meeting
16 with all the people like them who are going to figure out how to implement this at their
17 site and their contracting officer. We've got to regroup with all those folks.

18 But it's almost getting that realization that we've got to figure out how
19 the money flow will work.

20 Ultimately where it ends up within the Department is does this money --
21 is this part of program costs; do they include in the program costs; how do we divide
22 up the money within the Department to pay this.

23 We absolutely, and everyone has agreed that absolutely this does not
24 compete for money for cleanup work or building weapons or anything else. This is not
25 a competition for the same pot of money. But how do we identify how that money
26 chain flows through so it gets to whoever is going to pay it.

27 So, that was a very complicated answer. It's working both ways; up

1 the chain and down the chain. I do believe that at this point but I may change my mind
2 that one size does not fit all. I think this is probably a very good model for Rocky. It
3 probably is not the same model we'd use at a site that had the same contractor for their
4 entire history. And we may end up with even a more complicated model at a site like
5 Oak Ridge that has so many contractors on site right now that it's hard to even know
6 who all works there now, let alone who worked there in the past.

7 So, there's going to be a variety of ways to make this work. But I do
8 think that's sort of the down side of it. That means it's going to take a while to make it
9 happen. The up side of it is that I think we're getting very, very creative on getting
10 money to people who need to get paid.

11 I think the early estimates on people for which there's no willing payor
12 at the end is going to get much, much smaller because we're finding creative ways to
13 make that happen.

14 MR. BODEN: It's great that we're doing that. I think it's something
15 that we clearly hope to see move along. It's good to see things happen.

16 MS. SPIELER: Len suggested that for those sites where there is no
17 longer a site that essentially DOE could make this simple by taking out the middleman.

18 MS. COOK: I think we do have it simple in some of those cases. We
19 have a retro policy in place that covers everybody who ever worked there. The
20 complicated part of that is that they may get paid based on percentage of payouts
21 which, as Len just explained to us, is very expensive. So I've got to regroup on that
22 and see what -- maybe there's a better cost effective way.

23 MS. SPIELER: Is there anyone, Len, who isn't covered by any of
24 these sort of various models that we've just been talking about? USEC, I guess?

25 MS. COOK: USEC is one of them. I made a comment a minute ago
26 about political pressure. That's where again we may have some other ways to
27 convince them to play well with others. We'll work that.

1 Some of the retro policies only cover the prior M&O contractors and
2 not subs. We've got to figure out how that works.

3 KATE: State funds are still state funds. Private insurance, other than
4 Rocky Flats, is still private insurance. The vast majority of the complex was self-
5 insured in some way, shape or form, which was true self-insurance, except in Ohio and
6 Nevada.

7 For anyone who was commercially insured, the rule is very clear. We
8 can't order an insurer or lessor --

9 MS. SPIELER: Yes. But I thought Len's model specifically takes it out
10 of that. So you wouldn't be telling Ohio to pay the claims. DOE would be paying the
11 claims as if it were a self-insurer.

12 So once you say that, at least my reaction is wait a minute. Now I'm
13 confused again. I thought we found a way to eliminate that as a problem.

14 KATE: We've still got to work with state funds.

15 VOICE: There's self-insurance allowed in most --

16 KATE: There's self-insurance but the vendor of the insurance and the
17 person have a right to raise defenses. Like in Colorado, where you enjoin the special
18 fund, the fund has a right to raise defenses, and DOE can't order the fund not to. If
19 there's a TAP saying I'll pay it, the fund may stand down those voluntarily. But we
20 can't order them or predict that or expect that of the fund.

21 MR. BODEN: But you could where like Len was talking about. That
22 is, enter into an agreement with the state fund that you won't ask them to pay those
23 claims and that you'll pay them.

24 KATE: Len may be able to. DOE headquarters -- the contractor may
25 be able to purchase a product that makes unnecessary those defenses. DOE
26 headquarters, Bev cannot issue a letter telling Travelers to stand down or the Colorado
27 state fund to stand down.

1 MR. BODEN: Understood. But then the question is if there are at least
2 in cases where there are currently existing contractors, that DOE could make an
3 arrangement with that contractor that permitted them to do what Len is doing.

4 MR. MARTINEZ: And I think there's a contractor is ever one of those
5 states.

6 MR. BODEN: There certainly is.

7 MS. COOK: Again, it's a matter of working the interfaces, too. The
8 federal government working with the state work comp system, that's not it. Logistics,
9 that's it. But they really need to work with the businesses in their state. And that's why
10 what Len's got going is so important. It's the businesses that have to figure out how it
11 works with their state.

12 MR. BODEN: But in principle you can work with Bechtel in Nevada
13 and Nevada to make an arrangement in principle.

14 KATE: If you're talking about a new policy that DOE were willing to
15 enter into now, what Len's described is a new contract to ensure this thing for a price.
16 Absolutely. Yes.

17 MS. SPIELER: And we thought that was -- or I thought that was what
18 we were talking about because if you bring in the state funds and if the money is coming
19 out of the state funds, then there's a fiduciary obligation to defend the state funds. And
20 I don't think they can waive statute of limitation defenses in those situations.

21 There's no way DOE could expect them to waive. The only way to do
22 that is to have an outside payor and an outside contract that says this doesn't implicate
23 -- it never hits the state fund at all.

24 MS. COOK: I will tell you that you have to be very sympathetic to the
25 state worker comp systems, too, especially in those states for which DOE is a large
26 employer and they have just a couple of other large employers. The precedent that sets
27 and the expectation of the people in that state on how state worker's comp works --

1 I'm very sympathetic to the state being very cautious about that. The state of Idaho is
2 one of them.

3 What DOE does, people are going to think everybody else in the state
4 ought to be doing. And whether that affects their ability to get other businesses to come
5 into the state and work because of -- you know, there's all kinds of fallout from this
6 that I'm sure those people -- Glenn maybe can explain that to us.

7 I'm sure people are thinking about how does this affect --

8 MR. SHOR: Nobody's going to Idaho.

9 MS. COOK: Actually, yes. We did a lot of recruiting.

10 KATE: If it helps when doing the state agreements, three states
11 reminded me that the reasons they were in the state of X was they didn't want to be
12 driven by Washington, D.C. in any way, shape or form. That's why we live here in --
13 fill in the blank.

14 MS. SPIELER: Don, you were having trouble getting a word in?

15 MR. ELISBURG: No. I'm fascinated by this conversation. We've
16 now had it four times and this is the reason why we set up John's other subcommittee
17 that's meeting on December 13th to exactly address some of these issues and really
18 perhaps give some suggestions back to the Department about how to approach these
19 issues, which are real issues, but no matter how many times we talk about them, unless
20 we can sit down and do some suggestions about where to go, this is going to be a real
21 issue.

22 MS. COOK: What I'm hoping to have by December is first off to have
23 the matrix that says this is what is in place. And then to have some of the proposals
24 about this is how it might work at other sites. And then turn it loose on these insurance
25 companies to have heart attacks after we go that way. And then get down to a real
26 discussion about whether these things are workable or not.

27 So that's one of the reasons why December seems kind of late,

1 although it's coming up on us quickly, to have as much information going in for
2 strawmen to say this is what we'd like to see if this would work with you and see what
3 this does in the big picture for insurance companies.

4 MR. OLSEN: One thought. DOE a number of different times that I've
5 been in that complex has developed a so-called model contract with M&O contracts.
6 And in fact, that's going on on the Office of Science labs and whatnot.

7 Wausau has been in the business for as long as it has because Wausau
8 has been actually awarded contracts to provide these retro insurance policies.

9 This might be something that DOE would want to think about
10 developing, a model TPA policy type of a contract that would address these kinds of
11 issues. And then just send it out for an expression of interest and get some comments
12 from industry in that fashion.

13 MS. COOK: As I said, there's a lot of new contracts coming up.
14 We'll want to get the right things in them. So I think this is going to be useful for the big
15 picture.

16 MS. SPIELER: John, do you feel like there are two issues or one. I
17 mean, one subcommittee or two subcommittees here, leaving aside whether you have
18 responsibilities for both. We might relieve you. But these issues do seem to be
19 merging.

20 MR. BURTON: I think the issues are closer now. But for the time
21 being, I would set aside this ad hoc committee. There still may be some things. When
22 we get back to this issue of exactly how you do the permanent partial determination, it's
23 not quite the same thing. But I think that probably is further down the road than I think
24 what the contractor insurer subcommittee ought to be looking at.

25 If we're still in business early next year then I think that ad hoc
26 committee and PPD issue needs to be re-raised through that vehicle. But I guess I'd
27 set it aside.

1 I think the discussion we've been having here, the heart of it really kind
2 of goes to what we would have in this hearing in December anyhow.

3 MS. SPIELER: To sort of morph into that discussion, where does that
4 stand and to what extent does the subcommittee need assistance from DOE staff in
5 pulling this meeting together? Is there an invitation list that's been evolved and so on?

6 MR. BURTON: Okay. Well, let me just remind you who's on this
7 subcommittee, which is Emily, Mark, Len, Iris, Don Elisburg, Glenn Shor, myself.

8 One of the issues we've got to clarify here is Richard Thomas, about a
9 year ago we invited, who's with the IG, to join the subcommittee. We need to clarify
10 whether he's technically a member of the subcommittee or not because he's not a
11 member of the overall committee.

12 At the time we did this, I had clearance to go ahead and invite him.
13 He's with the IG.

14 KATE: I think we can invite anyone you'd like to the subcommittee. I
15 think the question of whether DOE pays for people to get into town and stay overnight
16 is a separate issue and has to do with real membership in the real committee.

17 MS. SPIELER: No. I think DOE can pay for members of
18 subcommittees. My understanding, based on communications I've had with Judy some
19 time ago is that there can be named members of subcommittees who are essentially
20 members of the subcommittee although not members of the federal advisory committee
21 whose way will be paid by the Department.

22 As to ad hoc invitees who are invited to come and share concerns and
23 thoughts, that would not be paid by the Department.

24 KATE: Well, the real question then is whether Dick was ever made
25 part of the subcommittee a year ago or if that was a novation.

26 MR. BURTON: I was authorized to invite him and he accepted it. On
27 the other hand, the subcommittee hasn't been in operation. We probably need to

1 clarify that point.

2 Beyond that, --

3 MS. COOK: We'll work it with Judy.

4 MR. BURTON: Yes. Let's work on that issue.

5 I think the two things that I think need to be done are to clarify exactly
6 what we would like to get advice on and then come up with an invitation list.

7 I have not -- the only person I've spoken to is Barry Llewellyn, who's
8 with the National Council on Compensation Insurance because we've had this
9 reoccurring question about, among other things, experience rating and how this is going
10 to affect the experience rating even if you do pay claims. I think that would be the
11 logical place to get that. But otherwise, I think it's open.

12 It is going to be a meeting, as I understand from the instructions I've
13 received, as opposed to a hearing. Which I think one of the advantages is that we can
14 therefore control the agenda more and the list of invitees.

15 And I would hope we would have a relatively limited number of invitees
16 and we have plenty of chance to talk with them. Because some of these issues are ones
17 that -- we don't want somebody there for 10 minutes and then the next person goes on
18 for 10 minutes. I think Barry could very well be an hour.

19 So I would like to see us identify four or five at most invitees.

20 Obviously, Bev, you're going to have things that you'll want to present
21 and ask for reactions to. Something can be made available in advance and circulated.

22 MS. COOK: I like your comment about a meeting. We really need a
23 good hard core working meeting, not a hearing, a working meeting. That's really what
24 we need. And to throw out here's the way we've looked at implementing; tell us where
25 the hard spots are; tell us if this is going to make you crazy or that we're just out of our
26 minds with this. That's really -- we need some very honest and open feedback from
27 these folks on making it work.

1 Otherwise, I think it's more a question of identifying the proper parties
2 from the contractor insurer community to whom we're going to say -- you know, this
3 thing has been around for two years. The physician rule is out. What is it that you're
4 concerned about. Are there solutions you would suggest to us or any problems.

5 KATE: John, you and I discussed literally for more than a year who
6 might be -- and I don't know if this is something you want to vent here or people
7 should think about and report out to you.

8 But certainly if we're going to focus on something like Len's proposal
9 as a solution, if it ends up acceptable to DOE headquarters, it may make some other
10 parts of what we had originally talked about talking about less important because
11 certainly Travelers, Wausau, representatives from the state funds, AIG.

12 I've talked to Staggart on the National Council of Self-Insurers. All
13 those people become absolutely unimportant to the discussion if we had a separate and
14 wholly reimbursed way to fund.

15 It literally take those people away from the table. The only people still
16 needing to be at the table is Barry, because how do they count those injuries into the
17 future and how will Bechtel and Kaiser and the other entities accept these injuries.

18 So I don't know if between now and December 13th Len's actually
19 going to get it to us and get it vetted but we may sort of bifurcate the meeting into a --
20 here's what we might do or what's the whole rest of the world look like.

21 I only say that because you and I had at one point had gone fairly far
22 along on who we thought might be logical attendees.

23 MR. BURTON: I think probably we think to re-think that issue.
24 Partially it depends upon how far you're willing to go along with the lines of the models
25 we've talked about today. If we do, it does make certain issues moot.

26 MS. COOK: I'm looking for simple solutions. Unfortunately, they may
27 be more complicated than what Len has described as a simple solution for us.

1 MS. SPIELER: Would states have concerns about the model or some
2 kind of model like Len is proposing?

3 KATE: Administrators or funds? I've asked this question and the
4 answer is no. I mean, the administrators have no heartburn right now.

5 The administrators have no heartburn about administering these claims.
6 The very small states are afraid that if we bring willing payors or not, they're
7 comfortable in their ability to adjudicate.

8 MS. SPIELER: I'm not asking about adjudication. I'm asking about
9 whether there is any state administrator or state fund issue with regard to claims if
10 they're paid the way Len is suggesting they would be paid.

11 KATE: No.

12 MR. BURTON: Well, we might want to nonetheless invite somebody
13 from the state funds just to cover ourselves on that side.

14 MR. BODEN: And I think you still want to keep some insurers at the
15 table because they may have some perspective that you haven't thought about yet from
16 their angle.

17 MR. MARTINEZ: They's say write me the contract however you want
18 to write it. I can make money off of it. And if that carrier doesn't want to, somebody
19 will.

20 MS. SPIELER: John, anything else?

21 MR. BURTON: I don't think so. I think what I'll do is send the
22 message out. And obviously I'll work with the staff here within the next week or so
23 and kind of ask for feedback on that and try to figure out a couple of names. And then
24 we'll ask you to suggest names of people. I think we need to give certain person that
25 are coming in as much lead time as we can.

26 MR. ELISBURG: So this is going to be someplace in Washington
27 around December 13th.

1 MR. BURTON: A one day meeting.

2 MS. SPIELER: Friday the 13th.

3 MR. BURTON: Probably an early morning on the assumption that
4 people will want to break on Friday afternoon by 3:00.

5 MS. SPIELER: Iris, is there anything about state agency relations that
6 we haven't discussed?

7 MS. POST: No. I don't think so, Emily. And I sent you a short note.
8 The largest percentage of workers are ready under most of those states, I think.

9 So as I see it, there's really no reason for that subcommittee to continue
10 meeting, except that there may be some issues like Kate mentioned, post-agreement,
11 that come up as we go along. And then at those times perhaps if those issues need to
12 be addressed, they can be. Either go on furlough or sabbatical.

13 MS. SPIELER: Les. Evaluation issues. Because that's actually been a
14 theme today. And I wonder if you'd like to not only talk about what's gone on prior to
15 the meeting but in specific any issues that you think might be useful for us to discuss or
16 make recommendations about.

17 MR. BODEN: Well, I think -- and I think everybody's in agreement on
18 this, that it would be important to have in place a system that collects data on what are
19 agreed are the most important measures of performance so that those measures can
20 then be used not only to share with Commerce or whomever, but also to provide
21 feedback to the program on where it's working well and where there are problems.

22 We haven't been able as a subcommittee to move forward yet because
23 we needed to arrange what's now going to be happening in a couple of weeks now;
24 namely an initial template for a data collection system.

25 My sense is that what we really need to do perhaps is meet by
26 telephone after we get the template and then if the advisory committee continues into
27 2003, perhaps have a meeting with the subcommittee, between the subcommittee and

1 somebody from the contractor and also somebody from DOE. Because the important
2 questions to address I think are going to be what are the critical things that ought to be
3 measured and what needs to be collected and measured.

4 I think we sort of -- we wrote something out a year or so ago and
5 maybe longer than that of what was our impression about the kinds of things that could
6 be looked at at that point. But I think now with the physicians panel rule in place and
7 with a bunch of things clarified, I think it's work going back and looking at it.

8 I do think it's important -- I think the hardest feedback part but in the
9 way the most important is following people from when they leave the physicians panel
10 until they either receive or don't receive -- until their case is closed. And a lot of that is
11 going to be -- unless there's some agreement established with the states for some
12 specific set of things with the contractors, it's going to be sort of -- it's going to be
13 thought through I think on how to go about doing that.

14 Because in the end, what you really want to know is how many people
15 went through the system; how many of them were successful; how much did they get
16 paid and how long did it take.

17 MS. COOK: Because this is so unusual and so different and we've
18 never done this before, normally I'm the kind of person that -- you decide the rules up
19 front and then you work it through and you make improvement on the rule.

20 This is almost -- it's like with our physicians panel. You lay out that this
21 is what you're going to do and this is how you're going to do it and this is what you'll
22 provide us and all that. And they kept saying just give us a case to see what they look
23 like.

24 This is going to be somewhat like that, too. We're going to end up with
25 cases at the end that we've been walked through to either get the attention focused
26 really locking in the processes or to get people to understand the complications. So
27 we'll continue to work on how to make that happen well, but it's really going to take

1 some on-the-floor cases working through to really get the time lines down.

2 MR. BODEN: And I think there are going to be some fairly obvious
3 places to start in terms of kinds of things that you want to measure. I'm assuming from
4 the data contractor/vendor point of view that there's some flexibility built into the
5 system so that if changes need to be made or things added and we need to have a
6 program to do that.

7 This is a dynamic process, the review process. And so with the
8 exception of those things that are in pure compliance with the rule, anything else is
9 subject to change and approval. That's what we're all seeing.

10 As such, we've scheduled in major program reviews for the system to
11 collect those emerging requirements and then fold those in four times a year.

12 Just one other things that I would mention. I think it would be
13 important not only to have measures that are overall program measures but measures
14 that you can look at area by area within the programs to see that there's some
15 consistency where there's been good performance or worst performance in a particular
16 area.

17 MS. COOK: Yes. For instance, turn around time for the sites. Also,
18 sometimes it's had whose had the most variety in what they do.

19 Our multi-purpose sites are much more difficult. We have buildings at
20 those sites that have gone through six or seven different lives, whereas a site like Rocky
21 that has done one thing, did it very well and did it for a very long time. It's a little more
22 straightforward even in knowing what's in buildings versus a site at Span River,
23 Hanford or Idaho that did a lot of different things in one of their buildings.

24 So sometimes there's a reasons that we're getting a variety of
25 components and sometimes it's just not everybody is on the same page.

26 MR. BODEN: Anybody else from the subcommittee want to mention
27 anything?

1 I think at this point we're basically in the situation where we need to
2 have something to work with and then we can have a creative and useful discussion.

3 MS. POST: Les, can I ask a question? I'm not on your subcommittee
4 but did you anticipate or did you make suggestions on having customers response or
5 injured worker response at various levels or various times in the process to get a
6 reading as to how the agency is doing, how the Department's doing, how the claims are
7 going through the process? Because it seems to me that getting that kind of feedback is
8 really important for a lot of different reasons.

9 But even going to something as simple as in the offices where you're
10 accepting the claims, having people fill out a little form as to how satisfied were they
11 with what information they were given and how things went, even in the office. It might
12 be helpful.

13 MR. BODEN: Yes. I would think particularly in the parts of the
14 process that nobody knows exactly how they're going to go, which are what happens
15 post-medical panel, that it would be useful not only to have set forms but maybe to
16 have sort of random interviews with people where they're open-ended and you find out
17 things that maybe you weren't expecting. But then again --

18 KATE: Could we warm them up with a series of questions on state
19 comp?

20 MS. COOK: That's one of the things that Jack does a lot with our
21 resource centers and our points of contact in the field. You know, where do they get
22 the most questions; where do they get the most action.

23 I don't know how formal that is, and maybe we need to do that a little
24 more formally.

25 MR. EAGAN: I've just taken over in the last 12 days, but you're going
26 to be talking about plans to formalize the feedback at regular intervals now.

27 MR. BODEN: I think it's good to have feedback that you get not just

1 feedback that comes to you, because that tends to be selective feedback and you may
2 not get a very good picture overall.

3 MS. SPIELER: Anything else on that specific issue?

4 (No response.)

5 I have a list of just a few things that we sort of have talked about today
6 that I just want to make sure that we're all on the same page. And then there may be
7 others because I usually take more comprehensive notes but I failed to today.

8 Obviously, Bev we'll be eagerly awaiting word to you with regard to
9 whether the charter for the committee is going to be extended, particularly if it's being
10 extended. Then I think the committee members do need to be re-charged with regard
11 to the conflict and ethics issues and it would be useful for you to send something out to
12 committee members in that regard.

13 We also need to make sure that the minutes of the last meeting are
14 revised to reflect some of the actions that I think were taken at that meeting that are not
15 reflected in the current draft.

16 We'll be working and I think it will be predominantly be Kate working
17 with John to develop the December 13th meeting to try to really explore where we are
18 with regard to the subcontractor/contractor, insurer/no contractor issues. And to the
19 extent possible, that meeting will undoubtedly be more productive if we have some
20 sense about what direction the Department is going to go in terms of cutting out the
21 carriers from the loop of the payment and claims processing.

22 I don't mean as TPAs but I mean the prior insurance agreements.

23 I think Kathryn asked, and there seemed to be agreement, but I wasn't
24 sure it was explicitly stated, that it would be very useful if the physician panel report
25 form were shared with particularly the occupational medicine doctors who sit on this
26 committee, which would be Laurie Welch, Steve Markowitz, Kathryn Mueller and
27 Greg Wagner, so that they can take a look at it in terms of their own experiences as

1 physicians in doing reports for these systems.

2 And I think if anyone else on the physician panel subcommittee wants
3 to look at that form, that would also make sense.

4 It's also I think -- and this was just discussed -- that you will try to
5 involve the performance evaluation subcommittee as you go forward in developing the
6 various metrics and review criteria, not only for what is directly in Rick's system but
7 also -- and perhaps this is going to be more difficult as things move from that system
8 into the physician panel system and then out of the physician panels to the as yet
9 undefined system by which claims get paid.

10 And those pieces from a performance evaluation perspective need to
11 be in some way linked.

12 And I think again there's expertise on that subcommittee that would be
13 very useful for you in doing that. And I would urge you again to go directly to the
14 subcommittee members as opposed to going through the committee as a whole for
15 input and feedback on that.

16 Mark suggested a model TPA contract. If there were any way to take
17 a look at that even before or as part of the process by which we can convene the
18 December 13th meeting, that might be extremely useful, I think, because one of the
19 possibilities that this meeting could play is not only in trying to see where people are
20 missing problems but also in figuring out ways to provide reassurance to carriers and
21 contractors who are concerned about the impact of the program on their current
22 programs.

23 Much more specific, Les made a proposal early on that I think you
24 showed some interest in with regard to trying to figure out a way to move claims with a
25 presumption of going forward and an ability for people to stop that forward motion as
26 opposed to putting it on the backs of the applicant and -- okay, it's ready to go to the
27 next step. That it would be probably useful to keep the claims moving in some way,

1 particularly if there isn't going to be a final -- if you haven't gotten it in, then it's the end
2 of the story.

3 And so to the extent that's possible, it would be important.

4 I would add to that, to the extent that we end up with a system where
5 there are some people who don't have easy payment mechanisms for claims and may
6 even face defenses in the state compensation systems and inability to use medical panel
7 results in the state compensation systems because it's actually a fully litigated claim, the
8 Department has to give some thought to giving notice to those people about what this
9 does and doesn't mean for their claim.

10 Because in fact, it's not exactly clear what we're providing of value to
11 them if they have to litigate the claim with all the defenses being raised.

12 So that's contingent I think on the question of how you're going to
13 construct these contracting and paying relationships.

14 There was a question raised, unresolved, and sort of perplexing about
15 what to do about the special cohort group in the subtitle D program, which I don't think
16 we came up with any -- I mean, there were various ways of cutting this but we certainly
17 didn't make a recommendation. And unless the committee is prepared at this point to
18 try to formulate a recommendation, I would just say that it's clearly a problem that
19 faces the Department.

20 The balance is clear in terms of what happens one way or the other. If
21 the committee would like to continue to discuss that, we certainly could do that.

22 MS. COOK: Let me make my request really specific. One side of it is
23 maybe we rule on those special cohort groups -- but setting that aside and saying if we
24 have to do dose reconstructions with people that are in the special exposure cohort, do
25 you all see a way that we can do that with management doing it in a way that is credible
26 that doesn't have people going crazy because we've hired a contractor to do the dose
27 reconstructions.

1 MS. SPIELER: Can I ask a question about that? Is NIOSH saying
2 they won't do it under their current contract or they won't do it period? Because aren't
3 they contracting it out to an outside firm?

4 MS. COOK: They are.

5 MS. SPIELER: So couldn't there be a DOE contract through NIOSH
6 to that same outside firm to do the same dose reconstruction?

7 Exactly what is the nature of their objection?

8 MS. COOK: I tried that.

9 MS. SPIELER: And they said no?

10 MS. COOK: They said that that wasn't clearly their responsibility
11 under the statute and that if they felt that their workload was such that they just didn't
12 want to be involved.

13 MR. BODEN: The outside contractor said that?

14 MS. COOK: No. NIOSH.

15 Could we just add money to their contract?

16 MR. BODEN: Yes.

17 MS. SPIELER: They said no?

18 MS. COOK: And the impasse was getting to the point where it was
19 affecting our MOUs with them to develop the rest of our business, so we kind of had to
20 take it off of the table.

21 The other logistic part of that is even if that worked, they would put
22 ours at the end of all of theirs. And that's way down the road. I don't know that I
23 want to wait that long.

24 MS. SPIELER: Could DOE do a direct contract with the same
25 contractor?

26 MS. COOK: That's my question.

27 MS. SPIELER: And if you did, could you get the NIOSH increment to

1 work?

2 MS. COOK: My staff is worried that people are going to be very
3 concerned that we are contracting with someone to give us --

4 (Cross-talk.)

5 MR. MARTINEZ: If you went to the same contractor it may be a
6 discredit to the results of the DOL.

7 MS. SPIELER: No matter what you do, it's going to look bad, which
8 is probably why NIOSH doesn't want to do it.

9 MR. ELISBURG: Wait a minute. There's already a high level of
10 concern that NIOSH contracted with RAU, which has a series of built-in conflicts of
11 interest. They have an elaborate program to avoid conflicts. But to the extent you
12 would then turn around and look at the most likely organization to go do this, you'd be
13 back there and you'd be sort of a double-conflict.

14 And I think creating a lot of questions, even though that might be the
15 most pragmatic way to deal with what you're trying to deal with.

16 So I think it does deserve some thought.

17 MS. COOK: Yes. So let me think about it. I was suggesting that we
18 ask VA to do it. And then someone brought up VA's credibility.

19 I don't have an easy answer to this one. You all can just think about it.

20 What I want -- I absolutely believe that we can have credible dose
21 reconstructions done, so it's a matter of perception, not reality. But I want people to
22 know that when we have helped them put their case together and get the information
23 together that they can believe the information that we give them.

24 I'm really concerned that we provide the right kind of service to the
25 people we are serving.

26 So you all have to help me with that.

27 Steve's over here with this frown on his face.

1 MR. MARKOWITZ: No. It's not clear. I don't know whether NCI
2 would subcontract this out for you. I don't know what the solution is.

3 MR. ELISBURG: Do we know the number of people with potential
4 claims that are involved with this that have come through the cohort and are coming
5 back to you a second time?

6 MS. COOK: I asked Labor for the number of cohort claimants so that
7 we might look at what the whole universe is. They couldn't answer that. And some
8 subset of several thousand is who may come to our door.

9 We have right now a handful that we can specify as a particular cohort.

10 MR. ELISBURG: I'm just saying 500 is one thing. Five thousand is
11 another.

12 KATE: That's right.

13 MS. COOK: The other part of it is these are people that will have been
14 successful and they will have gotten their \$150,000. They will have medical bills paid.
15 So they're not the dire needy group either. So when we look at who's the most
16 desperate, these are not. These are people that have had some kind of compensation.

17 KATE: And the two structural difficulties which this committee is
18 extremely aware of I'm sure is that there were questions about whether we, DOE,
19 ought to be ordering dose reconstructions or whether NIOSH would better be able to
20 specify that contract. And so it puts Bev in a position of doing a thing that the statutory
21 originally opined perhaps we shouldn't be doing. And secondly, as we needed to have
22 dose reconstructions done on people for whom some parts of the statute have said,
23 gosh, since there isn't a good enough record to do this thing, we're not going to do the
24 thing. And then we have to do the thing. We can't avoid our own causation discussion
25 under subtitle D.

26 She could authorize that we take causation as she brought up to you off
27 without a dose reconstruction. We of course would worry about whether we had done

1 what society was perceived as due diligence, to look for those people's exposure.

2 Some worker who succeeded in the cohort and fails for whatever the
3 dose reconstruction is might feel that the whole reason subtitle D said you don't need a
4 dose reconstruction because we don't have good enough data to give you one might
5 have affected the ultimate quality of their dose reconstruction that we performed.

6 They might not think that.

7 MS. COOK: Let's think about it. I'm going to have to figure out
8 something very, very soon.

9 MS. SPIELER: Other than the fact that we had also specifically asked,
10 Judy, that you get from Pete - you may need to remind him of his slide and send them
11 on to us along with the DOL website. And I assume that as DOE develops some data,
12 some of that will be up on the DOE website.

13 And to the extent that you can keep us informed about it once you
14 actually start getting more claims through the physician panel, that would probably be
15 useful.

16 Are there other specific issues that either did or didn't come up today
17 that you would like to follow up with in summing up this meeting, Les?

18 MR. BODEN: Just a quick -- I would like to request information about
19 clear point of contact e-mail and phone number within DOE, and also within that
20 contractor for my subcommittee.

21 MR. SHOR: I'd like to request that if there are other state MOUs that
22 are signed that we get copies of those.

23 KATE: You'll probably see Idaho and South Carolina within the next
24 couple of days.

25 MR. SHOR: Can you just -- in the whole package, just send us what
26 that site is on the website.

27 KATE: Yes.

1 MS. MUELLER: This may not become relevant if we have all willing
2 payors, but assuming that in fact there are some areas where we don't end up with a
3 willing payor, I wondered if you'd consider anything that might promote the physician
4 panel's decision. In other words, the likelihood that they could have a deposition or
5 testimony or something.

6 For instance, in Colorado, if we had an unwilling payor, it really would
7 make a big difference if there was the ability for the physician panel member to
8 somehow personally represent that report, as opposed to just reading a report, which
9 would not have the same amount of weight.

10 So that would be something that would really promote the claimant's
11 case if you were in those kind of situations.

12 KATE: Letter AA sort of speaks to that, too.

13 MS. MUELLER: But it doesn't say anything about that particularly,
14 did it?

15 KATE: I left my glasses.

16 MS. MUELLER: I did read it through after you said that.

17 VOICE: How do you read the letters, Kate?

18 KATE: I think it just says, Kathryn, that OWA won't show up and
19 testify. It doesn't say a physician could not give a deposition.

20 MS. MUELLER: Yes. That's what I thought. I thought the physician
21 still could. Right. That's what I was thinking.

22 MS. COOK: And one of the things that is the workers will know who
23 their physician panel is.

24 MS. MUELLER: Right. Since they'd have to pay for it is an issue.

25 MS. COOK: I understand. I guess I'll find out Friday how physicians
26 feel about that. They might not necessarily want to be that active.

27 MS. MUELLER: Our experience has been in the state where we have

1 those kind of panels is that it's true they don't get into it for the purpose of doing that,
2 but they tend to be quite reasonable about doing the depositions to represent the
3 reports.

4 MS. SPIELER: Les?

5 MR. BODEN: I have a request and a question. The request is within a
6 couple of weeks could whoever the right person would be within DOE send out to the
7 committee an e-mail that lists the action items from this meeting and the
8 recommendations, if any, that the committee has made?

9 And that leads me to my second question.

10 Emily, you sort of read down a list of things. I didn't know if you were
11 interested in asking the committee whether it wanted to actually make those into formal
12 recommendations.

13 MS. SPIELER: I hadn't asked for formal recommendations since most
14 of them related to ongoing work of subcommittees and cooperative work other than the
15 very specific and concrete suggestion you had made earlier today about keeping claims
16 moving.

17 If you would like to make them into formal recommendations --

18 MS. COOK: I would like you to think about writing these things up.
19 This is what I've heard; this is what the actions --

20 MS. SPIELER: Yes. That would be great.

21 MS. COOK: I'll take a look at it to make sure that I understood what
22 you told me.

23 MS. SPIELER: That would be great. And then you won't receive
24 another long letter from me.

25 Are there other issues like that?

26 Len, I know you had something you wanted to say.

27 MR. MARTINEZ: I've covered it.

1 MS. SPIELER: Okay.

2 MR. MARTINEZ: I didn't know you were going to put me on the hot
3 seat.

4 MS. COOK: I told you when we started that I was going to use you --

5 MR. MARTINEZ: You did warn me.

6 MS. SPIELER: She didn't say of what, though.

7 MR. MARTINEZ: That's true.

8 MS. SPIELER: Other issues or matters that the committee should take
9 up today?

10 (No response.)

11 I'll entertain a motion to adjourn then.

12 MR. MARTINEZ: Public comment?

13 MS. SPIELER: Is there anyone here who would like to offer public
14 comment to this committee?

15 (No response.)

16 Hearing none, then I will entertain a motion to adjourn.

17 MR. MARTINEZ: So move.

18 MR. MARKOWITZ: Second.

19 MS. POST: Can I just ask one thing, Emily? There were two letters in
20 our packets from the public and I'm sure that they'll --

21 MS. SPIELER: I'm sorry. You're absolutely right. I apologize.

22 It should be noted for the record of the committee meeting that several
23 comments were offered by mail and should be incorporated into the record of this
24 committee meeting.

25 Thank you, Iris.

26 I'm not sure if that happens automatically or not, but we would be
27 particularly interested in having that happen.

1 Other than that, unless the committee is re-chartered, then I anticipate
2 there may be a couple of subcommittee meetings the rest of this year. Otherwise, this
3 may be the last time this committee meetings in its formal nature.

4 So on behalf of the Department, I would like to thank everyone who
5 was a member of this committee for participating over the last two years.

6 And again, thank the staff for the considerable amount of work and
7 cooperation that we had between the committee and staff over this couple of years of
8 struggle.

9 MR. ELISBURG: And thank the Assistant Secretary for being so kind
10 as to sit with us twice now.

11 MS. SPIELER: We do appreciate it, Bev.

12 MS. COOK: I've done a lot of hard things but this is much harder than
13 anything else I've done.

14 I appreciate all the advice.

15 MS. SPIELER: And Bev, I will say that I'm sure that the members of
16 this committee, whether formally designated or not, would be more than happy to
17 continue to be of any assistance to the Department if called upon.

18 Thank you very much.

19 (Whereupon, the proceedings were concluded at 3:10 p.m.)